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10 CALIFORNIA SPORTFISHING  
11 PROTECTION ALLIANCE

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE, a non-profit  
corporation,

Plaintiff,

vs.

SANTA CRUZ COUNTY, KASEY  
KOLASSA and PAJARO VALLEY  
UNIFIED SCHOOL DISTRICT

Defendants.

Case No. 5:15-cv-00127-EJD

**SETTLEMENT AGREEMENT**

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387)

**WHEREAS**, Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
(hereinafter "CSPA") is a non-profit public benefit corporation dedicated to the preservation,  
protection, and defense of the environment, wildlife, and natural resources of California's  
waters;

**WHEREAS**, Defendants SANTA CRUZ COUNTY and KASEY KOLASSA  
(hereinafter, collectively, "County") own and operate an approximately 80 acre closed landfill

1 and active recycling and transfer station facility located at 9835 Newell Creek Road in Ben  
2 Lomond, California (the "Ben Lomond Facility");

3 **WHEREAS**, County owns and operates an approximately 112 acre active landfill and  
4 recycling and transfer station facility located at 1231 Buena Vista Lane in Watsonville,  
5 California (the "Buena Vista Facility");

6 **WHEREAS**, County owns an approximately 6.7 acre parcel of land located at 198  
7 Grimmer Road in Watsonville, California (the "Roy Wilson Facility") that is partially leased to  
8 Defendant the Pajaro Valley Unified School District (hereinafter "PVUSD");

9 **WHEREAS**, PVUSD leases and operates a portion of the Roy Wilson Facility as a  
10 school bus yard;

11 **WHEREAS**, the Ben Lomond Facility, the Buena Vista Facility and the Roy Wilson  
12 Facility shall be collectively referred to as the "Facilities" or individually as a "Facility";

13 **WHEREAS**, CSPA, County and PVUSD collectively shall be referred to as the  
14 "Parties" or individually referred to herein as a "Party";

15 **WHEREAS**, County and PVUSD collectively shall be referred to herein as  
16 "Defendants";

17 **WHEREAS**, the Ben Lomond Facility collects and discharges storm water from the  
18 Facility into Newell Creek which flows into the San Lorenzo River and ultimately the  
19 Monterey Bay (a map of the Ben Lomond Facility is attached hereto as **Exhibit A-1** and  
20 incorporated herein by reference);

21 **WHEREAS**, the Buena Vista Facility collects and discharges storm water from the  
22 Facility into Gallaghan Slough and Harkins Slough, both of which flow into the Pajaro River  
23 and ultimately the Monterey Bay (a map of the Buena Vista Facility is attached hereto as  
24 **Exhibit A-2** and incorporated herein by reference);

25 **WHEREAS**, the Roy Wilson Facility collects and discharges storm water from the  
26 Facility into Corralitos Creek, which flows into Salispuedes Creek, then the Pajaro River, and  
27

1 ultimately the Monterey Bay (a map of the Roy Wilson Facility is attached hereto as **Exhibit**  
2 **A-3** and incorporated herein by reference);

3 **WHEREAS**, storm water discharges associated with industrial activity are regulated  
4 pursuant to the National Pollutant Discharge Elimination System ("NPDES"), General Permit  
5 No. CAS000001 [State Water Resources Control Board], Water Quality Order  
6 No. 91-13-DWQ (as amended by Water Quality Orders 92-12 DWQ, 97-03-DWQ and 14-57-  
7 DWQ), issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342 (hereinafter  
8 "General Permit");

9 **WHEREAS**, on or about November 5, 2014, November 13, 2014 and November 19,  
10 2014, Plaintiff provided notice of County's alleged violations of the Clean Water Act ("County  
11 Notice Letters"), and of its intention to file suit against County and others, to the Administrator  
12 of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA  
13 Region IX; the U.S. Attorney General; the Executive Director of the State Water Resources  
14 Control Board ("State Board"); the Executive Officer of the Regional Water Quality Control  
15 Board, Central Coast Region ("Regional Board"); and to County, as required by the Clean  
16 Water Act, 33 U.S.C. § 1365(b)(1)(A) (true and correct copies of the County Notice Letters are  
17 attached as **Exhibit B-1** and incorporated herein by reference);

18 **WHEREAS**, on July 15, 2015, Plaintiff provided PVUSD, as lessee, notice of  
19 PVUSD's alleged violations of the Clean Water Act relating to the Roy Wilson Facility  
20 ("PVUSD Notice Letter"), and of its intention to file suit against PVUSD, to the Administrator  
21 of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA  
22 Region IX; the U.S. Attorney General; the Executive Director of the State Water Resources  
23 Control Board ("State Board"); the Executive Officer of the Regional Water Quality Control  
24 Board, Central Coast Region ("Regional Board"); and to PVUSD, as required by the Clean  
25 Water Act, 33 U.S.C. § 1365(b)(1)(A) (true and correct copies of the PVUSD Notice Letter is  
26 included in **Exhibit B-2** attached hereto and incorporated herein by reference);

1       **WHEREAS**, County and PVUSD each deny the occurrence of the violations alleged in  
2 the Notice Letters and maintain that they have complied at all times with the provisions of the  
3 General Permit and the Clean Water Act;

4       **WHEREAS**, the Parties agree that it is in their mutual interest to resolve this matter as  
5 to all entities and persons named in the Notice Letters without litigation and to enter into this  
6 Settlement Agreement (“Agreement”);

7       **WHEREAS**, CSPA filed its complaint against County herein in the United States  
8 District Court, Northern District of California on January 9, 2015, and its first amended  
9 complaint on January 21, 2015, and its second amended complaint to add PVUSD as a  
10 defendant therein on September 16, 2015 (this matter hereinafter referred to as “the Action”);

11       **WHEREAS**, for purposes of this Agreement, the Parties stipulate that venue is proper  
12 in this Court, and that County and PVUSD do not contest the exercise of jurisdiction by this  
13 Court to dismiss this matter with prejudice under the terms of this Agreement;

14       **WHEREAS**, this Agreement shall be submitted to the United States Department of  
15 Justice for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c);

16       **WHEREAS**, at the time the Agreement is submitted for approval to the United States  
17 District Court, CSPA shall submit a Notice of Settlement and inform the Court of the  
18 stipulated dismissal’s anticipated date of submission to the Court;

19       **AND WHEREAS**, upon expiration of the statutory review period, the Parties shall file  
20 with the Court a stipulation and order that shall provide that the Complaint and all claims  
21 therein shall be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2)  
22 and that the Court shall retain jurisdiction for the enforcement of this Agreement as provided  
23 herein (the date of entry of the Order to dismiss shall be referred to herein as the “Court  
24 Approval Date”).

25       **NOW THEREFORE IT IS HEREBY STIPULATED AND AGREED BETWEEN**  
26 **THE SETTLING PARTIES AS FOLLOWS:**

1 The above-referenced Recitals are incorporated into this Agreement's terms and  
2 conditions below.

3 **I. COMMITMENT OF DEFENDANTS**

4 **1. Compliance With General Permit & Clean Water Act.** Beginning  
5 immediately, and throughout the term of this Agreement, County shall continue implementing  
6 all measures needed to operate the Ben Lomond and Buena Vista Facilities, and PVUSD shall  
7 implement all measures needed to operate the Roy Wilson Facility, in compliance with the  
8 requirements of the General Permit and the Clean Water Act, subject to any defenses available  
9 under the law.

10 **2. Implementation of Specific Storm Water Best Management Practices.** On  
11 or before the dates set forth in Exhibit E ("BMP Implementation Schedule") attached hereto  
12 and incorporated herein by this reference, County shall complete the implementation of the  
13 storm water control best management practices ("BMPs") set forth in Exhibit C-1 and C-2  
14 attached hereto and incorporated herein by this reference, and PVUSD shall complete the  
15 implementation of the BMPs set forth in Exhibit C-3 attached hereto and incorporated herein  
16 by this reference.

17 **3. SWPPP Amendments.** Within 45 days after the Court Approval Date of this  
18 Agreement, County shall amend the SWPPPs for the Ben Lomond and Buena Vista Facilities,  
19 and PVUSD shall amend the SWPPP for the Roy Wilson Facility, to incorporate all of the  
20 relevant requirements of this Agreement and the General Permit, as well as revise the Facility  
21 maps associated with the SWPPPs. These revisions shall reflect all current site conditions and  
22 practices and identify potential Contaminants of Concern ("COC"), identify the location of all  
23 pervious and impervious areas, drop inlets, BMPs, and storm water flow vectors. These  
24 revisions shall also provide for monitoring and maintenance of all Facility collection and  
25 discharge points on a monthly basis year-round and prior to significant storms during the rainy  
26 season; and bi-annual storm water management training for Facility employees.



1           **4. Sampling Frequency.** For the 2015-2016 and 2016-2017 reporting years,  
2 County, for the Ben Lomond and Buena Vista Facilities, and PVUSD, for the Roy Wilson  
3 Facility, shall collect and analyze samples from six (6) Qualifying Storm Events<sup>1</sup> (“QSEs”). If  
4 three (3) Qualifying Storm Events are sampled within the first half of the reporting year at a  
5 Facility, that Facility may reduce sampling in the second half of the reporting year to two (2)  
6 qualifying storm events. The storm water sample results shall be compared with the values set  
7 forth in **Exhibit D**, attached hereto, and incorporated herein by reference. If the results of any  
8 such samples exceed the parameter values set forth in **Exhibit D**, Defendants shall comply  
9 with the “Action Memorandum” requirements set forth below.

10           **5. Sampling Parameters.** Each of the samples collected during the sampling  
11 events in each reporting year shall be analyzed for each of the constituents listed in **Exhibit D**,  
12 including TMDLs, as applicable, by a laboratory accredited by the State of California. All  
13 samples collected from the Facility shall be delivered to the laboratory as soon as possible to  
14 ensure that sample “hold time” is not exceeded. Analytical methods used by the laboratory  
15 shall comply with General Permit Requirements in regards to both test method and detection  
16 limit. See General Permit, Table 2, at page 43. All sampling results shall be provided to  
17 CSPA annually no later than July 15, pursuant to the Notice provisions below.

18           **6. “Action Memorandum” Trigger; CSPA Review Of “Action**  
19 **Memorandum”; Meet-and-Confer.** If any sample taken during the two (2) reporting years  
20 referenced in Paragraph 4 above exceeds the evaluation levels set forth in **Exhibit D**, or if  
21 County or PVUSD fails to collect and analyze samples from five (5) or six (6) QSEs during  
22 each reporting year, whichever is applicable under the “Sampling Frequency” provisions  
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24 \_\_\_\_\_  
25 <sup>1</sup> A Qualifying Storm Event (QSE) is defined in the General Permit as a precipitation event that: (a)  
26 Produces a discharge for at least one drainage area; and (b) is preceded by 48 hours with no discharge  
27 from any drainage area. See General Permit, Section XI(b)(1).  
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1 above, then County or PVUSD, as applicable, shall prepare a written statement discussing the  
2 exceedance(s) and/or failure to collect and analyze samples from the required number of QSEs,  
3 the possible cause and/or source of the exceedance(s), and additional measures that will be  
4 taken to address and eliminate future exceedances and/or failures to collect required samples  
5 ("Action Memorandum"). Action Memorandum shall be provided to CSPA no later than July  
6 15 for storm water samples collected between July 1<sup>st</sup> and June 30<sup>th</sup> of each reporting year, and  
7 for failure to sample five (5) or six (6) QSEs during each reporting year, whichever is  
8 applicable under the "Sampling Frequency" provisions above. Such additional measures may  
9 include, but are not limited to, further material improvements to the storm water collection and  
10 discharge system, changing the type and frequency of Facility sweeping, changing the type and  
11 extent of storm water filtration media or modifying other industrial activities or management  
12 practices at the Facility. Such additional measures, to the extent feasible, shall be implemented  
13 immediately and in no event later than sixty (60) days after the due date of the Action  
14 Memorandum. Within thirty (30) days of implementation, the Facility SWPPP shall be  
15 amended to include all additional BMP measures designated in the Action Memorandum.  
16 CSPA may review and comment on an Action Memorandum and suggest any additional  
17 pollution prevention measures it believes are appropriate within sixty (60) days of receipt of  
18 the Action Memorandum; however, CSPA's failure to do so shall not be deemed to constitute  
19 agreement with the proposals set forth in the Action Memorandum. Upon request by CSPA,  
20 County and PVUSD each agree to meet and confer in good faith (at the Facilities, if requested  
21 by Plaintiff) regarding the contents and sufficiency of the Action Memorandum.

22       **7. Inspections During The Term Of This Agreement.** In addition to any site  
23 inspections conducted as part of the settlement process and the meet-and-confer process  
24 concerning an Action Memorandum as set forth above, County, with respect to the Ben  
25 Lomond and Buena Vista Facilities, and PVUSD, with respect to the Roy Wilson Facility,  
26 shall permit representatives of CSPA to perform up to two (2) physical inspections of each  
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Facility during the term of this Agreement. These inspections shall be performed by CSPA's counsel and consultants and may include sampling, photographing, and/or videotaping and CSPA shall provide County and PVUSD, as applicable, with a copy of all sampling reports, photographs and/or video. CSPA shall provide at least forty-eight (48) hours advance notice of such physical inspection, except that County and PVUSD, as applicable, shall have the right to deny access if circumstances would make the inspection unduly burdensome and pose significant interference with business operations or any party/attorney, or the safety of individuals. In such case, County or PVUSD, as applicable, shall specify at least three (3) dates within the two (2) weeks thereafter upon which a physical inspection by CSPA may proceed. County or PVUSD, as applicable, shall not make any alterations to Facility conditions during the period between receiving CSPA's initial forty-eight (48) hour advance notice and the start of CSPA's inspection that County or PVUSD, as applicable, would not otherwise have made but for receiving notice of CSPA's request to conduct a physical inspection of the Facility, excepting any actions taken in compliance with any applicable laws or regulations. Nothing herein shall be construed to prevent County or PVUSD from continuing to implement any BMPs identified in the SWPPP during the period prior to an inspection by CSPA or at any time.

**8. Defendants' Communications To/From Regional and State Water Boards.**

During the term of this Agreement, County, with respect to the Ben Lomond and Buena Vista Facilities, and PVUSD, with respect to the Roy Wilson Facility, shall provide CSPA with copies of all documents submitted to, or received from, the Regional Water Board or the State Water Board concerning storm water discharges from the Facilities, including, but not limited to, all documents and reports submitted to the Regional Water Board and/or State Water Board as required by the General Permit, including all documents uploaded to the SMARTS system. Such documents and reports shall be provided to CSPA pursuant to the Notice provisions set forth below and contemporaneously with County's or PVUSD's, as applicable, submission(s)



1 to, or, receipt from, such agencies.

2           **9. SWPPP Amendments.** Pursuant to the Notice provisions set forth below,  
3 County and PVUSD, as applicable, shall provide CSPA with a copy of any amendments to the  
4 Facilities' SWPPPs made during the term of the Agreement within fourteen (14) days of such  
5 amendment.

6 **II. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS**

7           **10. Mitigation Payment In Lieu Of Civil Penalties.** As mitigation to address any  
8 potential harms from the Clean Water Act violations alleged in CSPA's Complaint, County  
9 agrees to pay the sum of \$75,000.00 and PVUSD agrees to pay the sum of \$25,000.00 to the  
10 Rose Foundation for Communities and the Environment ("Rose Foundation") for projects to  
11 improve water quality in the Newell Creek, San Lorenzo River, Gallagher Slough, Harkins  
12 Slough, Salispuedes Creek, the Pajaro River and Monterey Bay. Such mitigation payment  
13 shall be remitted directly to the Rose Foundation at: Rose Foundation, Attn: Tim Little, 1970  
14 Broadway, Suite 600, Oakland, CA 94612 within fifteen (15) days of the Court Approval Date.

15           **11. Compliance Monitoring Funding.** To defray CSPA's reasonable  
16 investigative, expert, consultant and attorneys' fees and costs associated with monitoring  
17 Defendants' compliance with this Agreement, County agrees to contribute \$11,250.00 and  
18 PVUSD agrees to contribute \$3,750 for each of the two Wet Seasons covered by this  
19 Agreement (\$30,000 total for the life of the Agreement), to a compliance monitoring fund  
20 maintained by counsel for CSPA as described below. Payment shall be made payable to the  
21 "Law Offices of Andrew L. Packard Attorney-Client Trust Account" and remitted to Plaintiff's  
22 counsel within fifteen (15) days of the Court Approval Date. Compliance monitoring activities  
23 may include, but shall not be limited to, site inspections, review of water quality sampling  
24 reports, review of annual reports, discussions with Defendants and PVUSD concerning the  
25 Action Memoranda referenced above, and potential changes to compliance requirements  
26 herein. Any unused compliance monitoring funding remaining at the termination date of this  
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1 Agreement will be returned within thirty (30) days to:

2 County:

3 Kasey Kolassa or Melodye Serino  
4 Department of Public Works, County of Santa Cruz  
701 Ocean St., Room 410  
Santa Cruz, CA 95060

5 PVUSD:

6 Melody Canady  
7 Chief Business Officer  
8 Pajaro Valley Unified School District  
294 Green Valley Road  
Watsonville, CA 95076

9 **12. Reimbursement of Fees & Costs.** County agrees to reimburse CSPA in the  
10 amount of \$51,750.00 and PVUSD agrees to reimburse CSPA in the amount of \$17,250.00 to  
11 defray CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs, and  
12 all other costs incurred as a result of investigating the activities at the Facilities, bringing the  
13 Action and negotiating a resolution in the public interest. Payment shall be made payable to  
14 the "Law Offices of Andrew L. Packard Attorney-Client Trust Account" and remitted to  
15 Plaintiff's counsel within fifteen (15) days of the Court Approval Date.

16 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF SETTLEMENT**  
17 **AGREEMENT**

18 **13.** With the exception of the timelines set forth above for addressing exceedances  
19 of values specified on **Exhibit D** and Action Memoranda, if a dispute under this Agreement  
20 arises, or a Party believes that a breach of this Agreement has occurred, the Parties shall meet  
21 and confer with the other Party or Parties involved within seven (7) days of receiving written  
22 notification from a Party of a request for a meeting to determine whether a violation has  
23 occurred and to develop a mutually agreed upon plan, including implementation dates, to  
24 resolve the dispute. If the Parties involved fail to meet and confer, or the meet-and-confer  
25 does not resolve the issue, after at least seven (7) days have passed after the meet-and-confer  
26 occurred or should have occurred, the Parties shall be entitled to all rights and remedies under  
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1 the law, including filing a motion with the District Court of California, Northern District,  
2 which shall retain jurisdiction over the Action for the limited purposes of enforcement of the  
3 terms of this Agreement. The Parties shall be entitled to seek reasonable fees and costs  
4 incurred in any such motion, and such reasonable fees and costs shall be awarded, pursuant to  
5 the provisions set forth in the then-applicable federal Clean Water Act and applicable case law  
6 interpreting such provisions.

7       **14. CSPA's Waiver and Release.** Upon the Court Approval Date of this  
8 Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors,  
9 assigns, directors, officers, agents, attorneys, representatives, and employees ("CSPA Parties"),  
10 releases County and its officers, directors, employees, shareholders, parents, subsidiaries, and  
11 affiliates, and each of its predecessors, successors and assigns, and each of their agents,  
12 attorneys, consultants, and other representatives (each a "Released County Party") and  
13 PVUSD, and its officers, directors, managers, employees, shareholders, parents, subsidiaries,  
14 and affiliates, and each of its predecessors, successors and assigns, and each of their agents,  
15 attorneys, consultants, and other representatives (each a "Released PVUSD Party"),  
16 respectively, from, and waives all known or unknown claims which arise from or pertain to the  
17 Action, including, without limitation, all claims and causes of action for injunctive relief,  
18 damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and  
19 others), costs, expenses or any other sum incurred or claimed, or which could have been  
20 claimed, in this Action, for the alleged failure of Released County Parties or Released PVUSD  
21 Parties, respectively, to comply with the Clean Water Act and General Permit at the Facilities,  
22 up to the Court Approval Date.

23       **15.** CSPA acknowledges it is familiar with section 1542 of the California Civil  
24 Code, which provides: A general release does not extend to claims which the creditor does not  
25 know or suspect to exist in his favor at the time of executing the release, which if known by  
26 him must have materially affected his settlement with the debtor. While CSPA asserts that  
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1 California Civil Code section 1542 applies to general releases only, and that the release in  
2 Paragraph 14 above is a limited release, CSPA hereby waives and relinquishes any rights or  
3 benefits it may have under California Civil Code section 1542 with respect to any other claims  
4 against Defendants arising from, or related to, the allegations and claims as set forth in the  
5 Notice Letter and/or the Complaint, up to and including the Court Approval Date of this  
6 Agreement. Within five (5) business days of the mutual execution of this Agreement, Plaintiff  
7 shall submit this Agreement to the United States Department of Justice ("DOJ") for the  
8 statutory 45-day agency review period set forth in 33 U.S.C. §1365(c) and submit a Notice of  
9 Settlement to the federal District Court.

10 16. Within seven (7) days of the expiration of the agency review period, the Parties  
11 shall file with the Court a Stipulation and Order providing that:

12 a. the Complaint and all claims therein shall be dismissed with prejudice  
13 pursuant to Federal Rule of Civil Procedure 41(a)(2); and,

14 b. the Court shall retain and have jurisdiction over the Parties with respect to  
15 disputes arising under this Agreement. Nothing in this Agreement shall be construed as  
16 a waiver of any Party's right to appeal from an order that arises from an action to  
17 enforce the terms of this Agreement.

18 17. **CSPA's Covenant Not to Sue.** For the period beginning on the Court  
19 Approval Date of this Agreement and ending on the Termination Date of this Agreement,  
20 CSPA agrees that neither CSPA, its officers, executive staff, members of its governing board  
21 nor any organization under the control of CSPA, its officers, executive staff, or members of its  
22 governing board, will file any lawsuit against County or PVUSD seeking relief for alleged  
23 violation(s) of the Clean Water Act or violation of the General Permit, effective July 1, 2015,  
24 at the Facilities. CSPA further agrees that, beginning on the Court Approval Date of this  
25 Agreement and ending on the Termination Date of this Agreement, CSPA will not support  
26 other lawsuits concerning violations of the Clean Water Act at the Facilities, by providing  
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1 financial assistance, personnel time or other affirmative actions, against County or PVUSD  
2 that may be proposed by other groups or individuals who would rely upon the citizen suit  
3 provision to challenge County's or PVUSD's compliance with the Clean Water Act or the  
4 General Permit at the Facilities.

5 **IV. MISCELLANEOUS PROVISIONS**

6       **18.**       The Parties enter into this Agreement for the purpose of avoiding prolonged  
7 and costly litigation. Nothing in this Agreement shall be construed as, and County and  
8 PVUSD each expressly do not intend to imply, an admission as to any fact, finding, issue of  
9 law, or violation of law, nor shall compliance with this Agreement constitute or be construed  
10 as an admission by Defendants of any fact, finding, conclusion, issue of law, or violation of  
11 law. However, this paragraph shall not diminish or otherwise affect the obligation,  
12 responsibilities, and duties of the Parties under this Agreement.

13       **19.**       The Agreement shall be effective upon mutual execution by all Parties. The  
14 Agreement shall terminate on the "Termination Date," which shall be September 30, 2017.

15       **20.**       The Agreement may be executed in one or more counterparts which, taken  
16 together, shall be deemed to constitute one and the same document. An executed copy of this  
17 Agreement shall be valid as an original.

18       **21.**       In the event that any one of the provisions of this Agreement is held by a court  
19 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

20       **22.**       The language in all parts of this Agreement, unless otherwise stated, shall be  
21 construed according to its plain and ordinary meaning. This Agreement shall be construed  
22 pursuant to California law, without regarding to conflict of law principles.

23       **23.**       The undersigned are authorized to execute this Agreement on behalf of their  
24 respective Parties and have read, understood and agreed to be bound by all of the terms and  
25 conditions of this Agreement.

26       **24.**       All agreements, covenants, representations and warranties, express or implied,  
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1 oral or written, of the Parties concerning the subject matter of this Agreement are contained  
2 herein. This Agreement and its attachments are made for the sole benefit of the Parties, and no  
3 other person or entity shall have any rights or remedies under or by reason of this Agreement,  
4 unless otherwise expressly provided for therein.

5 **25. Notices.** Any notices or documents required or provided for by this Agreement  
6 or related thereto that are to be provided to CSPA pursuant to this Agreement shall be  
7 hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the  
8 alternative, shall be sent by electronic mail transmission to the email addresses listed below:

9 Bill Jennings, Executive Director  
10 California Sportfishing Protection Alliance  
11 3536 Rainier Avenue  
12 Stockton, CA 95204  
13 E-mail: DeltaKeep@me.com

14 With copies sent to:

15 Andrew L. Packard  
16 Law Offices of Andrew L. Packard  
17 100 Petaluma Boulevard North, Suite 301  
18 Petaluma, CA 94952  
19 Tel: (707) 763-7227  
20 E-mail: Andrew@packardlawoffices.com

21 Any notices or documents required or provided for by this Agreement or related thereto that  
22 are to be provided to County pursuant to this Agreement shall be sent by U.S. Mail, postage  
23 prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail  
24 transmission to the email addresses listed below:

25 Kasey Kolassa or Melodye Serino  
26 Department of Public Works, County of Santa Cruz  
27 701 Ocean St., Room 410  
28 Santa Cruz, CA 95060  
E-mail: kasey.kolassa@santacruzcounty.us

With copies sent to:

T. Brooke Miller  
Assistant County Counsel, County of Santa Cruz  
701 Ocean St., Room 505  
Santa Cruz, CA 95060

1 E-mail: t.brooke.miller@santacruzcounty.us

2 Any notices or documents required or provided for by this Agreement or related thereto that  
3 are to be provided to PVUSD pursuant to this Agreement shall be sent by U.S. Mail, postage  
4 prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail  
5 transmission to the email addresses listed below:

6 Melody Canady  
7 Chief Business Officer  
8 Pajaro Valley Unified School District  
9 294 Green Valley Rd.  
10 Watsonville, CA 95076  
11 E-mail: melody\_canady@pvusd.net

12 With copies sent to:  
13 Devon B. Lincoln  
14 Attorney at Law  
15 Lozano Smith  
16 4 Lower Ragsdale Dr., Ste. 200  
17 Monterey, CA 93940  
18 E-mail: dlincoln@lozanosmith.com

19 Each Party shall promptly notify the others of any change in the above-listed contact  
20 information.

21 26. Signatures of the Parties transmitted by facsimile or email shall be deemed  
22 binding as if said signatures were original "wet ink" signatures.

23 27. No Party shall be considered to be in default in the performance of any of its  
24 obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is  
25 any circumstances beyond the Party's control, including, without limitation, any act of God,  
26 war, fire, earthquake, flood, and restraint by court order or public authority. A Force Majeure  
27 event does not include normal inclement weather, such as anything less than or equal to a  
28 100 year/24-hour storm event, or inability to pay. Any Party seeking to rely upon this  
paragraph shall have the burden of establishing that it could not reasonably have been expected  
to avoid, and which by exercise of due diligence has been unable to overcome, the Force

1 Majeure.

2       28.     If for any reason the Court should decline to approve this Agreement in the  
3 form presented, the Parties shall use their best efforts to work together to modify the  
4 Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are unable  
5 to modify this Agreement in a mutually acceptable manner, this Agreement shall become null  
6 and void.

7       29.     This Agreement shall be deemed to have been drafted equally by the Parties,  
8 and shall not be interpreted for or against any Settling Party on the ground that any such party  
9 drafted it.

10       30.     Except as to any separate written settlement, release or lease agreements  
11 between the County and PVUSD, this Agreement and the attachments contain all of the terms  
12 and conditions agreed upon by the Parties relating to the matters covered by the Agreement,  
13 and supersede any and all prior and contemporaneous agreements, negotiations,  
14 correspondence, understandings, and communications of the Parties, whether oral or written,  
15 respecting the matters covered by this Agreement. This Agreement may be amended or  
16 modified only by a writing signed by the Parties or their authorized representatives.



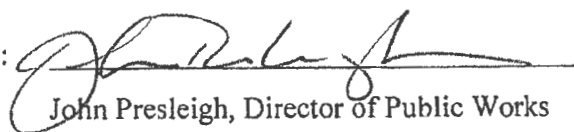
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The Parties hereto enter into this Agreement and respectfully submit it to the Court for its approval and entry.

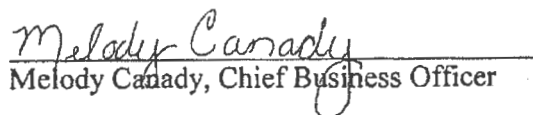
Dated: \_\_\_\_\_, 2015 California Sportfishing Protection Alliance

By: \_\_\_\_\_  
Bill Jennings, Executive Director

Dated: Nov 9, 2015 County of Santa Cruz

By:   
John Presleigh, Director of Public Works

Dated: Nov. 9, 2015 Pajaro Valley Unified School District

By:   
Melody Canady, Chief Business Officer

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The Parties hereto enter into this Agreement and respectfully submit it to the Court for its approval and entry.

Dated: 5 November, 2015 California Sportfishing Protection Alliance

By: Bill Jennings  
Bill Jennings, Executive Director

Dated: \_\_\_\_\_, 2015 County of Santa Cruz

By: \_\_\_\_\_  
John Presleigh, Director of Public Works

Dated: \_\_\_\_\_, 2015 Pajaro Valley Unified School District

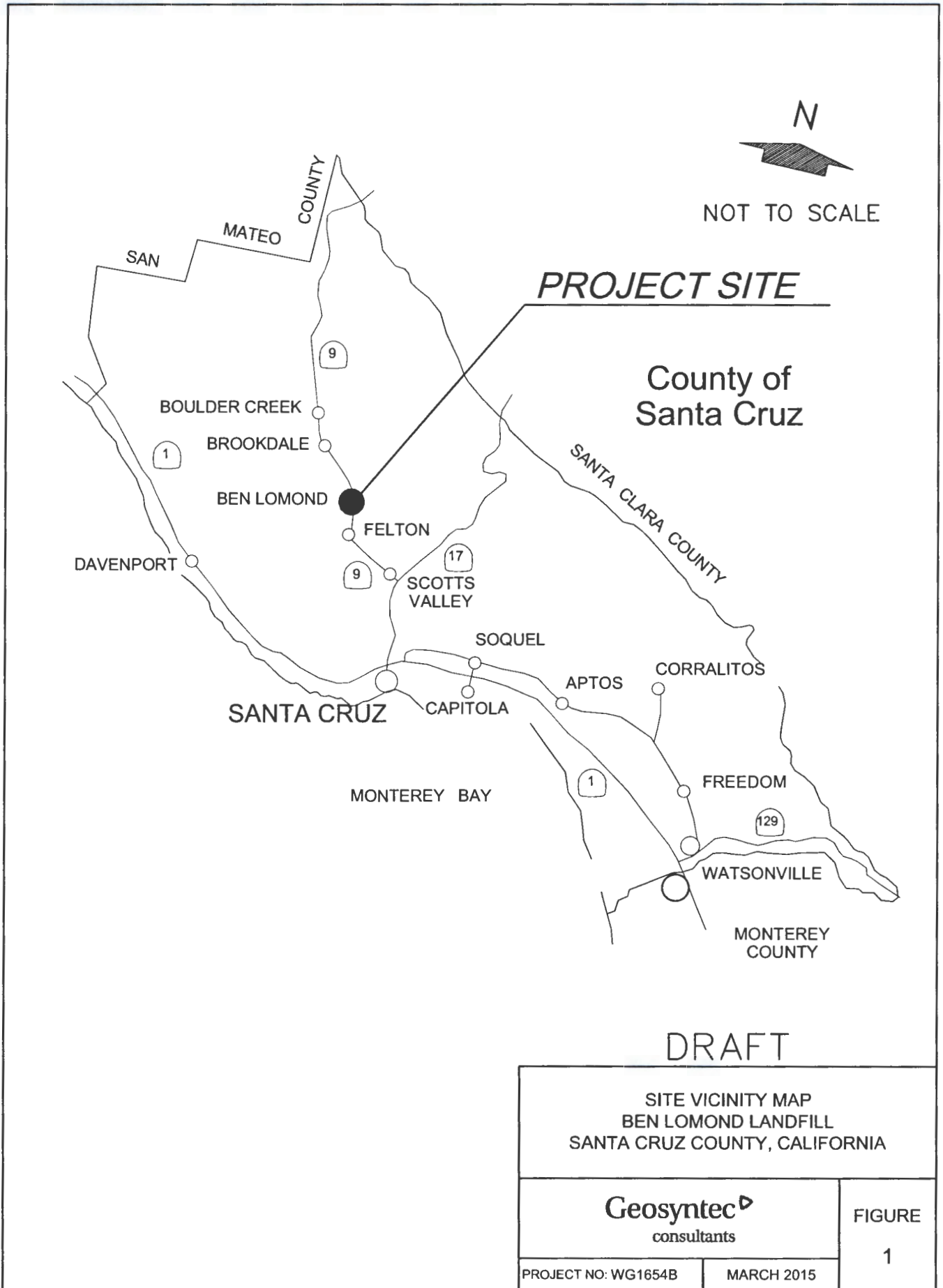
By: \_\_\_\_\_  
Melody Canady, Chief Business Officer

**EXHIBITS A (1-3) – Facility Site Maps**

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P:\CADD\SANTA CRUZ\BEN LOMOND\WG1654-SWPPP\FIG1--SITE VICINITY MAP







DRAFT

SITE DRAINAGE AND FACILITY LAYOUT  
BEN LOMOND LANDFILL  
SANTA CRUZ COUNTY, CALIFORNIA

Geosyntec®  
CORPORATION

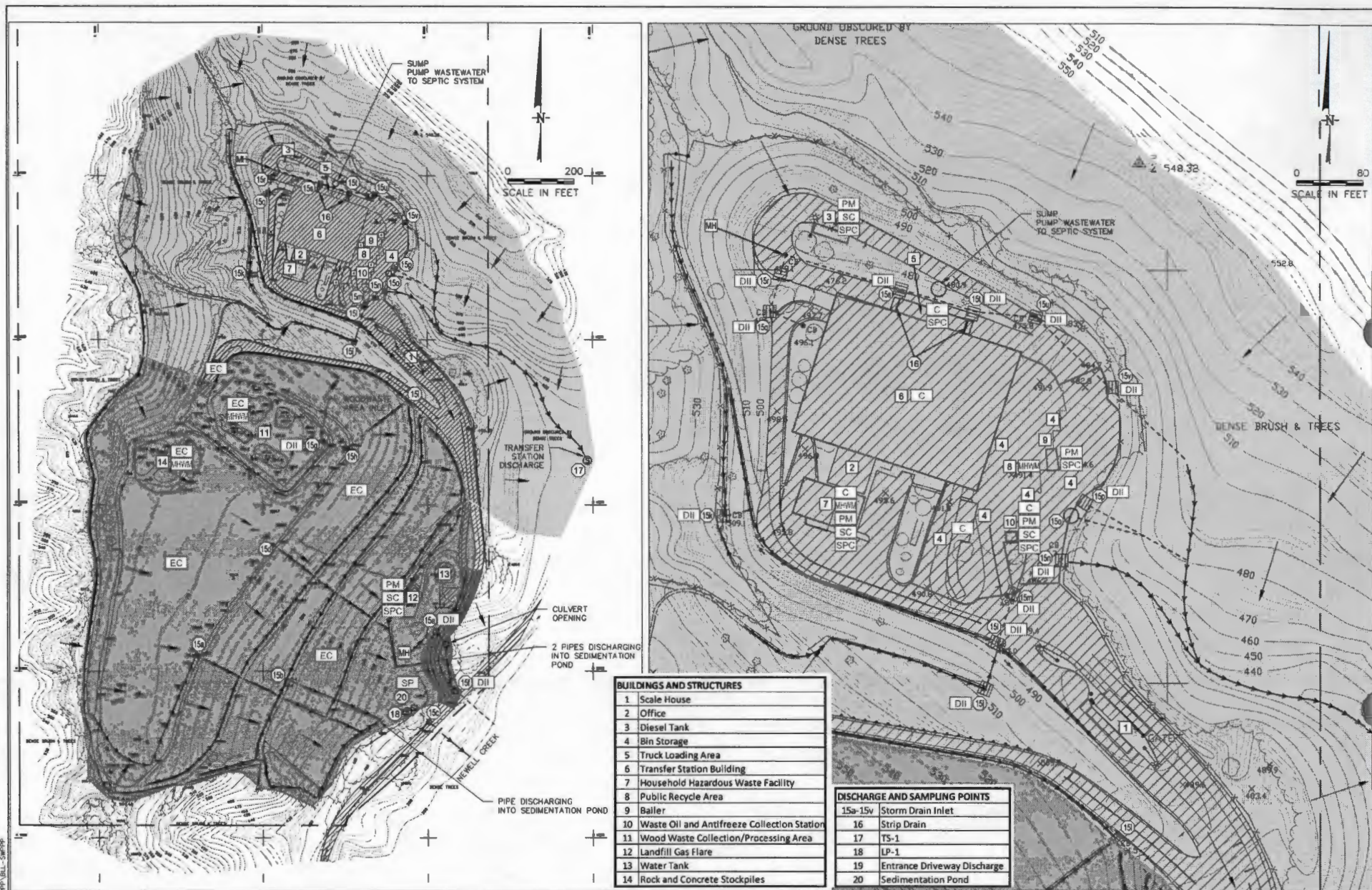
PROJECT NO. WG1854B

MARCH 2016

FIGURE

2





DRAFT

SITE BMPs  
BEN LOMOND LANDFILL  
SANTA CRUZ COUNTY, CALIFORNIA

Geosyntec<sup>®</sup>  
consultants

PROJECT NO: WG1654B

MARCH 2015

FIGURE  
3



DRAFT

Santa Cruz

Watsonville

Monterey Bay

College Lake

Grimmer Road

Holohan Road

Agricultural Drainage Ditch

Corralitos Creek

**Legend**

— Drainage Course

□ Approximate PVUSD Operation Boundaries

□ Approximate Site Property Boundary

■ Approximate Maximum Extent of Intermittent College Lake



0 660 Feet

**Site Location Map**

Roy Wilson Maintenance Yard  
Santa Cruz County, California

**Geosyntec**  
consultants

**Figure**  
**1**

WR1898

June 2015

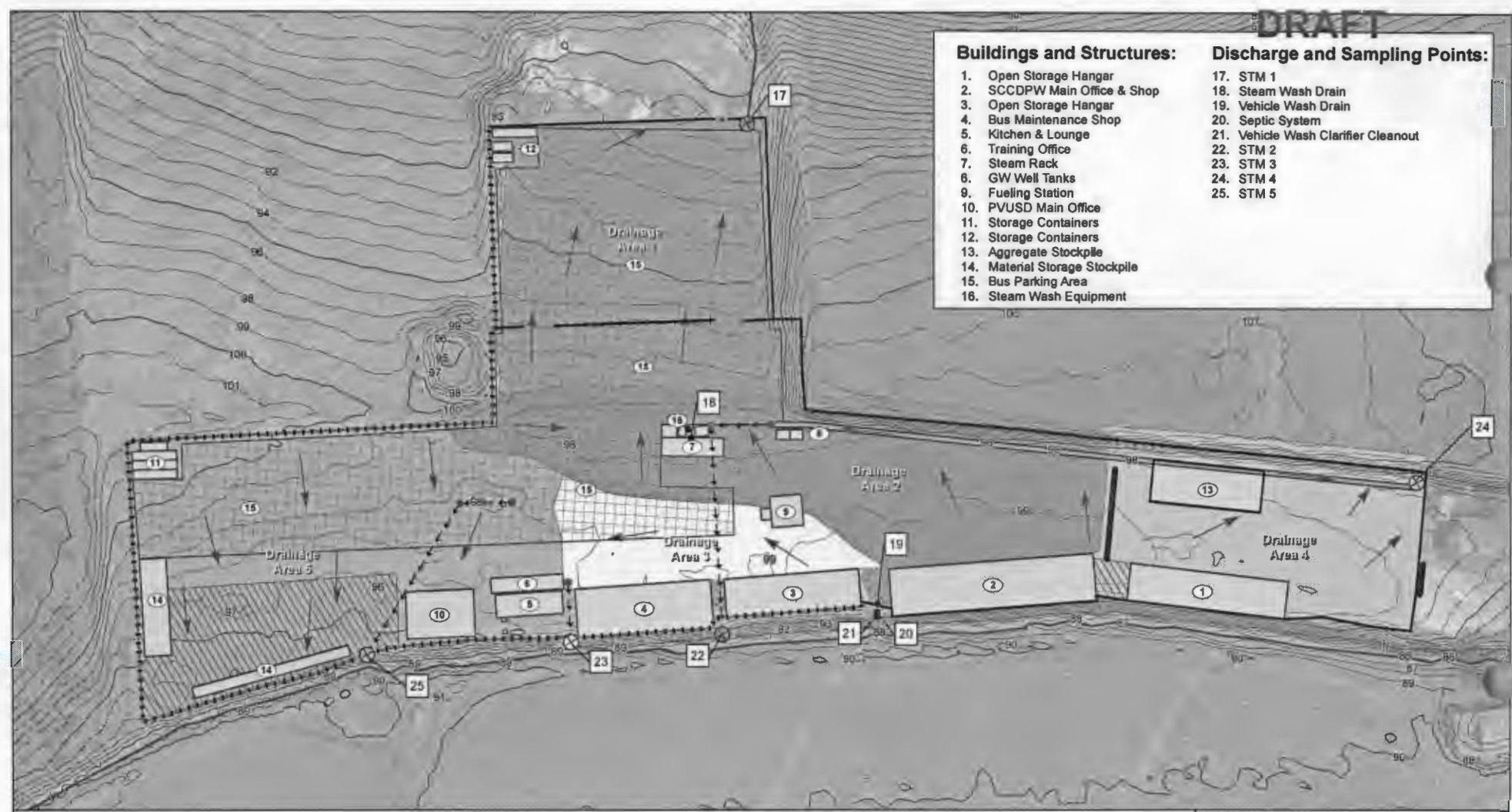
**DRAFT**

**Buildings and Structures:**

1. Open Storage Hangar
2. SCCDPW Main Office & Shop
3. Open Storage Hangar
4. Bus Maintenance Shop
5. Kitchen & Lounge
6. Training Office
7. Steam Rack
8. GW Well Tanks
9. Fueling Station
10. PVUSD Main Office
11. Storage Containers
12. Storage Containers
13. Aggregate Stockpile
14. Material Storage Stockpile
15. Bus Parking Area
16. Steam Wash Equipment

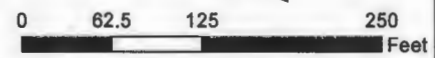
**Discharge and Sampling Points:**

17. STM 1
18. Steam Wash Drain
19. Vehicle Wash Drain
20. Septic System
21. Vehicle Wash Clarifier Cleanout
22. STM 2
23. STM 3
24. STM 4
25. STM 5



**Legend**

- |                               |                       |                    |
|-------------------------------|-----------------------|--------------------|
| ● Storm Drain Inlet           | ---- Gate/Fence       | ▨ Unpaved Area     |
| ⊗ Stormwater Monitoring (STM) | — Speed Bump          | ▨ Bus Parking Area |
| — Agricultural Drainage Ditch | ← Sub-Grade Drainpipe | Facility Operator  |
| — Curb and Fence              | — Vegetated Swale     | PVUSD              |
| — Fence                       | — Vegetation/Fence    | SCDPW              |
| — Flow Line                   | — Elevation (ft)      |                    |



**Roy Wilson Maintenance Yard  
Site Drainage and Facility Layout**  
Santa Cruz County, California

**Geosyntec<sup>®</sup>**  
consultants

WR1888

June 2015

**Figure  
2**



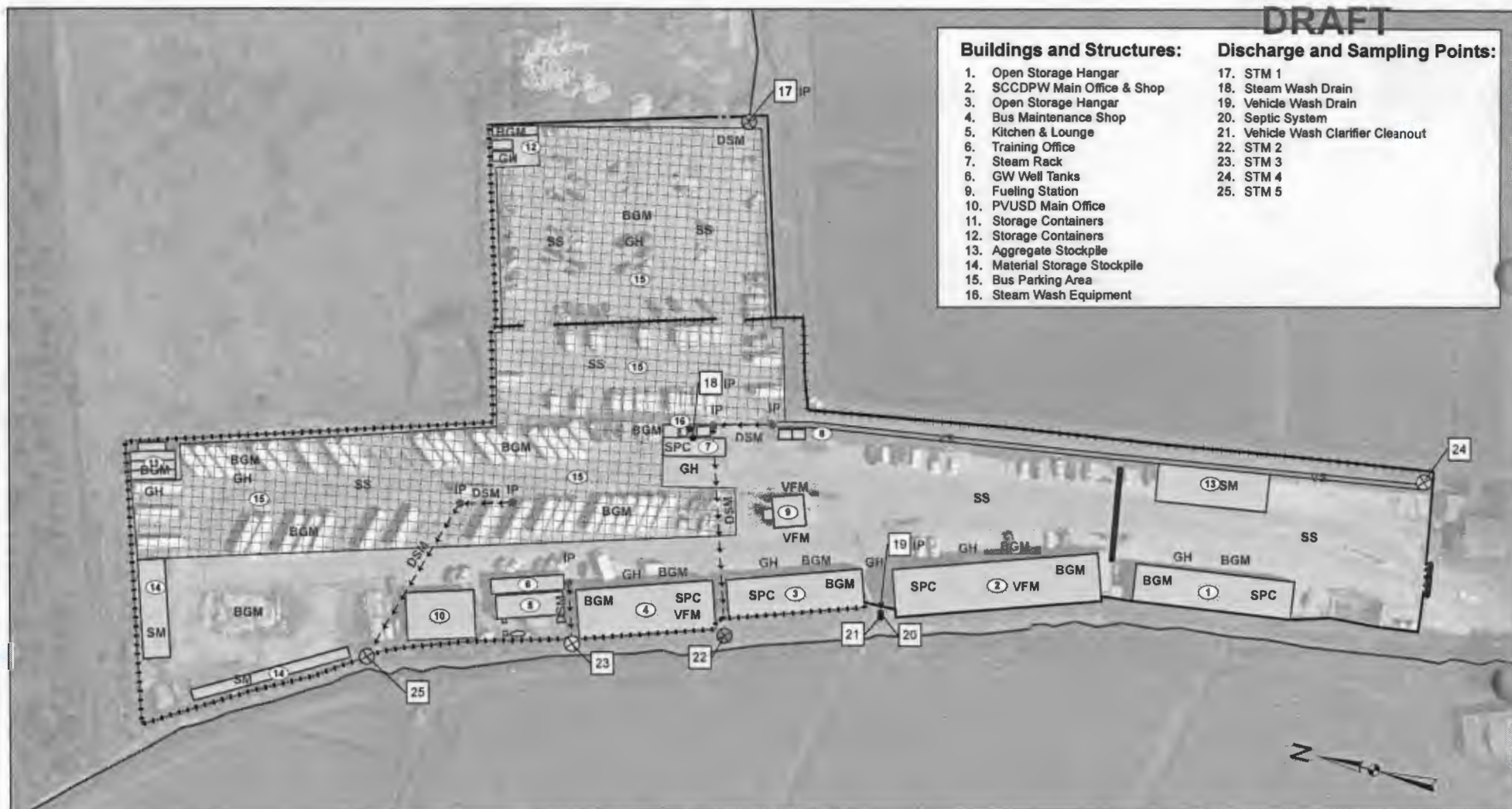
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**Buildings and Structures:**

1. Open Storage Hangar
2. SCCDPW Main Office & Shop
3. Open Storage Hangar
4. Bus Maintenance Shop
5. Kitchen & Lounge
6. Training Office
7. Steam Rack
6. GW Well Tanks
9. Fueling Station
10. PVUSD Main Office
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**Discharge and Sampling Points:**

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18. Steam Wash Drain
19. Vehicle Wash Drain
20. Septic System
21. Vehicle Wash Clarifier Cleanout
22. STM 2
23. STM 3
24. STM 4
25. STM 5

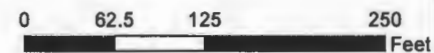


**Legend**

- |                               |                       |                   |
|-------------------------------|-----------------------|-------------------|
| ● Storm Drain Inlet           | .... Gate/Fence       | Facility Operator |
| ⊗ Stormwater Monitoring (STM) | — Speed Bump          | □ PVUSD           |
| — Agricultural Drainage Ditch | ← Sub-Grade Drainpipe | □ SCCDPW          |
| — Berm and Fence              | — Vegetated Swale     |                   |
| — Fence                       | — Vegetation/Fence    |                   |
|                               | □ Bus Parking Area    |                   |

**Roy Wilson Yard Best Management Practices:**

- |     |   |     |   |
|-----|---|-----|---|
| BGM | Building and Grounds Maintenance (SC-42)      | SS  | Street Sweeping and Vacuuming (SE-7)    |
| DSM | Drainage System Maintenance (SC-44)           | VFM | Vehicle Fueling and Maintenance (SC-20) |
| IP  | Inlet Protection (SE-10)                      | GH  | Good Housekeeping                       |
| SPC | Spill Prevention, Control and Cleanup (SC-11) |     |   |
| SM  | Stockpile Management (SC-33)                  |     |   |
| VS  | Vegetated Swale (TC-30)                       |     |   |



**Roy Wilson Maintenance Yard Site BMPs**

Santa Cruz County, California

**Geosyntec**  
consultants

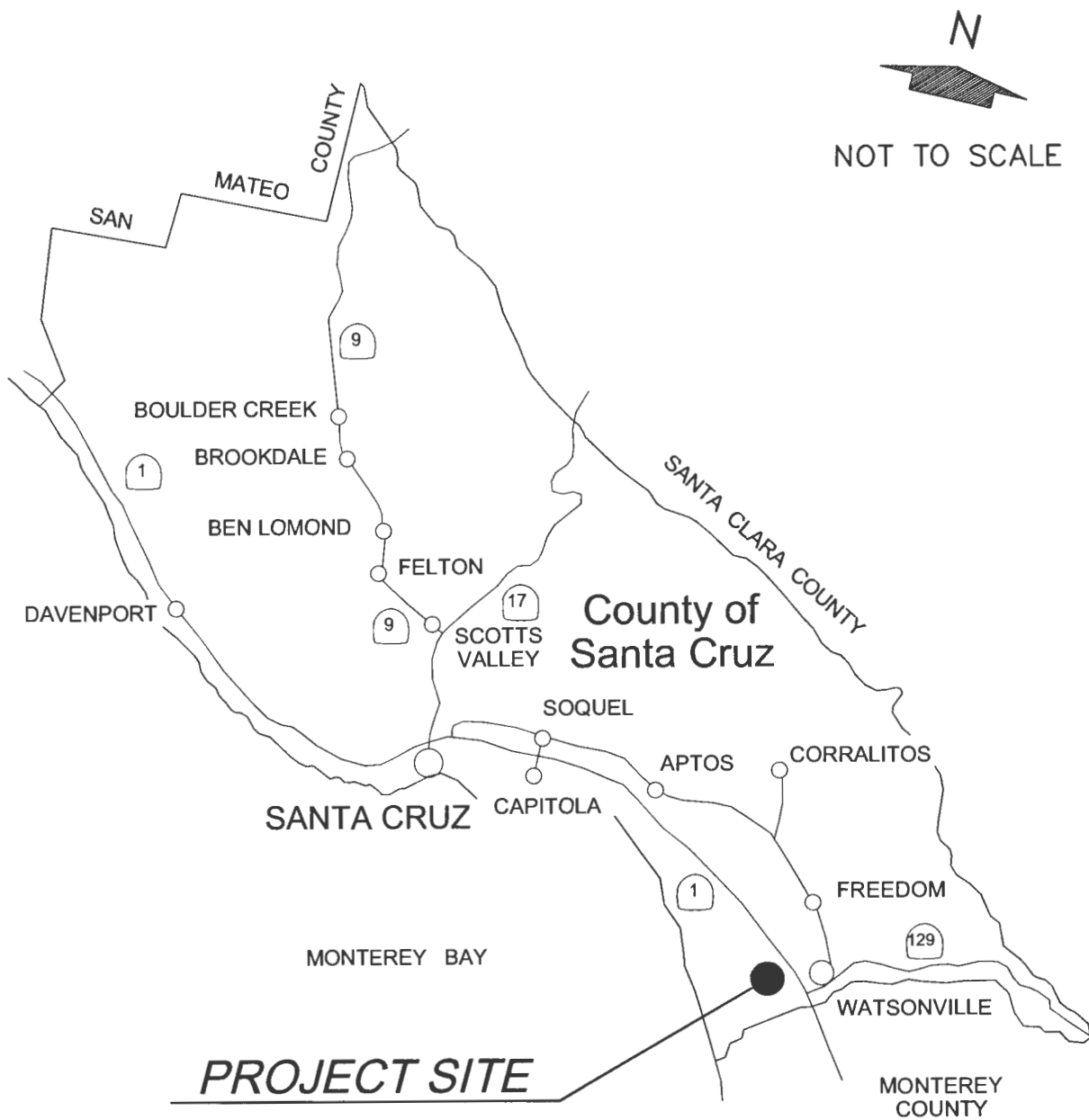
WR1898

June 2015

**Figure**

**3**

P:\CADD\ SANTA CRUZ\BUENA VISTA\WG1654-SWPPP\FIG1-SITE VICINITY MAP



SITE VICINITY MAP  
BUENA VISTA LANDFILL  
SANTA CRUZ COUNTY, CALIFORNIA

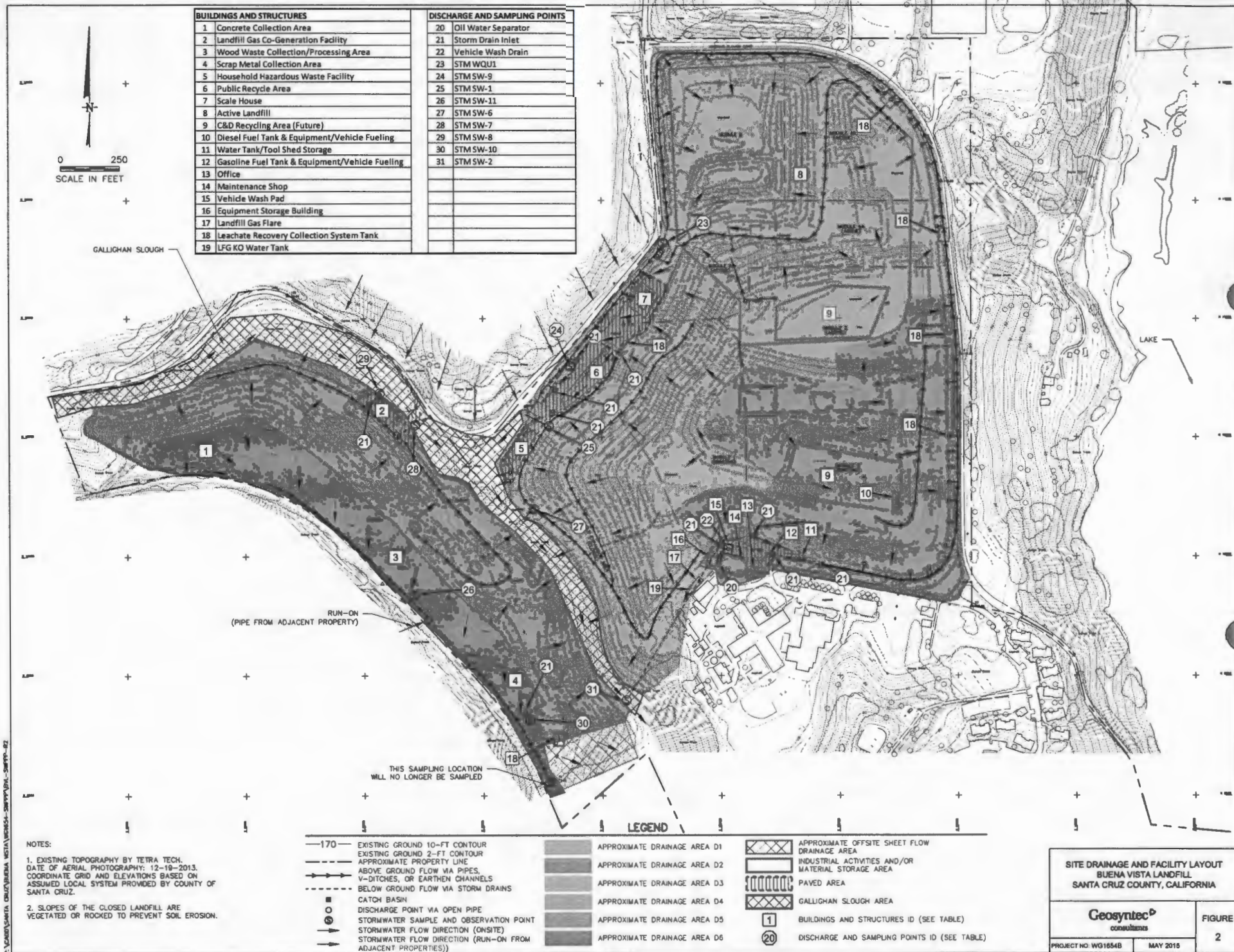
**Geosyntec**<sup>®</sup>  
consultants

PROJECT NO: WG1654B

MAY 2015

FIGURE  
1



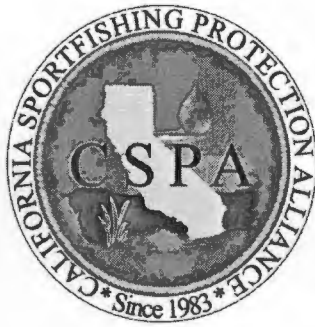






**EXHIBITS B (1-2)– CWA Notices of Violation and Intent to Sue Letters**

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November 13, 2014

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Kasey Kolassa  
Recycling and Solid –  
Waste Services Manager  
Public Works Department  
Santa Cruz County  
701 Ocean Street, Room 410  
Santa Cruz, CA 95060

Kasey Kolassa  
Recycling and Solid –  
Waste Services Manager  
Public Works Department  
Santa Cruz County  
9835 Newell Creek Road  
Ben Lomond, CA 95005

**Re: Notice of Violations and Intent to File Suit Under the Federal Water  
Pollution Control Act**

Dear Mr. Kolassa:

I am writing on behalf of the California Sportfishing Protection Alliance (“CSPA”) in regard to violations of the Clean Water Act (“the Act”) occurring at Santa Cruz County’s (“the County”) Ben Lomond Transfer Station facility located at 9835 Newell Creek Road, Ben Lomond, California (“the Facility”). The WDID number for the Facility is 3 44I001259. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including Newell Creek, the San Lorenzo River, and the Monterey Bay. This letter is being sent to you as the responsible owners, officers, or operators of the Facility. Unless otherwise noted, Kasey Kolassa and Santa Cruz County shall hereinafter be collectively referred to as “the County.”



This letter addresses the County's unlawful discharges of pollutants from the Facility to Newell Creek, which flows to the San Lorenzo River, which ultimately flows into Monterey Bay. The County is in ongoing violation of the substantive and procedural requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("General Permit" or "General Industrial Storm Water Permit"). Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur. *See* 40 C.F.R. § 135.2.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, the County and Kasey Kolassa are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against the County and Kasey Kolassa under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more fully below.

## **I. Background.**

### **A. The Clean Water Act.**

Under the Act, it is unlawful to discharge pollutants from a "point source" to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits "the discharge of any pollutant by any person . . ." except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The permit requirement extends to "[a]ny person who discharges or proposes to discharge pollutants. . . ." 40 C.F.R. § 122.30(a).

The term "discharge of pollutants" means "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). "Navigable waters" means "the waters of the United States" and includes, for example, traditionally navigable waters and tributaries to such waters. U.S.C. § 1362(7); 33 C.F.R. § 328.333 (a)(1)-(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters

adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

CSPA is informed and believes, and thereupon alleges, that the County has discharged, and continues to discharge, pollutants from the Facility to waters of the United States, through point sources, in violation of the terms of the General Permit, every day that there has been or will be any measurable discharge of storm water from the Facility since at least March 27, 1992. Each discharge, on each separate day, is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the County is subject to penalties for violations of the Act since November 13, 2009.

#### **B. The County's Facility, Water Quality Standards, and EPA Benchmarks**

The Facility is located at 9835 Newell Creek Road in the community of Ben Lomond and discharges indirectly to Newell Creek, the San Lorenzo River. The Facility falls under Standard Industrial Classification ("SIC") Code 4953 ("Hazardous Waste Treatment Storage or Disposal"). Accordingly the County must analyze storm water samples for Total Suspended Solids (TSS), pH, Specific Conductance ("SC"), and Total Organic Carbon (TOC) or Oil and Grease (O&G), in addition to Ammonia (NH<sub>3</sub>), Magnesium (Mg), Chemical Oxygen Demand (COD), Arsenic (As), Cadmium (Cd), Cyanide (Cn), Lead (Pb), Mercury (Hg), Selenium (Se), and Silver (Ag). *See* General Permit, Section B(5)(c)(i) - (iii) and at Table D, Sections M and N.

The County submitted a Notice of Intent ("NOI") to discharge under the General Permit in 1992. CSPA's investigations into the industrial activities at the County's approximately 80-acre Facility indicate that the Facility is used to process and store waste paper, plastic, metals, and glass; waste oil; scrap metals including aluminum and steel; hazardous waste; waste oils and greases; treated wood wastes; agricultural waste; and electronic waste including scrap household electronic products, computers and peripherals, audio and video components, and telephone equipment. The Facility also stores and processes general industrial and household hazardous waste, including: fluorescent light bulbs, ballasts, paints, stains, solvents, pesticides, herbicides, automotive products, cleaning products, aerosols and pool care chemicals. The County collects and discharges storm water from the Facility through at least two (2) discharge points into Newell Creek, which flows to the San Lorenzo River, which ultimately flows into Monterey Bay. Newell Creek, the San Lorenzo River and Monterey Bay are waters of the United States within the meaning of the Clean Water Act.

The Central Coast Regional Water Quality Control Board ("Regional Board") has established water quality standards for Newell Creek, The San Lorenzo River and Monterey Bay in the "Water Quality Control Plan for the Central Coast Basin" ("Basin Plan"). The Basin Plan incorporates in its entirety the State Board's "Water Quality Control Plan for Ocean Waters of California" ("Ocean Plan"). The Ocean Plan "sets

forth limits or levels of water quality characteristics for ocean waters to ensure the reasonable protection of beneficial uses and the prevention of nuisance. The discharge of waste shall not cause violation of these objectives.” *Id.* at 4. The Ocean Plan limits the concentration of organic materials in marine sediment to levels that would not degrade marine life. *Id.* at 6. The Basin Plan establishes ocean water quality objectives, including that dissolved oxygen is not to be less than 7.0 mg/l and pH must be between 7.0 - 8.5 s.u. *Id.* at III-2. It also establishes that toxic metal concentrations in marine habitats shall not exceed: Cu – 0.01 mg/L; Pb – 0.01 mg/L; Hg – 0.0001 mg/L; Ni – 0.002 mg/L; and, Zn – 0.02 mg/L. *Id.* at III-12.

The Basin Plan provides maximum contaminant levels (“MCLs”) for organic concentrations and inorganic and fluoride concentrations, not to be exceeded in domestic or municipal supply. *Id.* at III-6 - III-7. It requires that water designated for use as domestic or municipal supply shall not exceed the following maximum contaminant levels: Aluminum – 1.0 mg/L; Arsenic - 0.05 mg/L; Lead - 0.05 mg/L; and Mercury - 0.002 mg/L. *Id.* at III-7. The EPA has also issued recommended water quality criterion MCLs, or Treatment Techniques, for Mercury - 0.002 mg/L; Lead – 0.015 mg/L; Chromium – 0.1 mg/L; and, Copper – 1.3 mg/L.

The EPA has also issued a recommended water quality criterion for aluminum for freshwater aquatic life protection of 0.087 mg/L. In addition, the EPA has established a secondary MCL, consumer acceptance limit for Aluminum - 0.05 mg/L to 0.2 mg/L, and for Zinc - 5.0 mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. Finally, the California Department of Health Services has established the following MCL, consumer acceptance levels: Aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); Chromium – 0.5 mg/L (primary); Copper – 1.0 mg/L (secondary); Iron – 0.3 mg/L; and Zinc – 5.0 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

The California Toxics Rule (“CTR”), issued by the EPA in 2000, establishes numeric receiving water limits for certain toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: Arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); Chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); Copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); and Lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has identified waters of the Central Coast as failing to meet water quality standards for pollutant/stressors such as unknown toxicity, numerous pesticides, and mercury.<sup>1</sup> Discharges of pollutants into a surface water body may be deemed a “contribution” to an exceedance of the CTR, an applicable water quality standard, and may indicate a failure on the part of a discharger to implement adequate

---

<sup>1</sup> *See* [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/2010state\\_ir\\_reports/category5\\_report.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/category5_report.shtml).

storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitations as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by the County: Total Suspended Solids – 100 mg/L; pH – 6.0 – 9.0 s.u; Iron – 1.0 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for Specific Conductance of 200 µmhos/cm and Total Organic Carbon – 110 mg/L. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to: Oil & Grease – 15.0 mg/L, Ammonia – 19 mg/L, Magnesium – 0.0636 mg/L, Chemical Oxygen Demand – 120 mg/L, Arsenic – 0.16854 mg/L, Cadmium – 0.0159 mg/L, Cyanide – 0.0636 mg/L, Lead – 0.0816 mg/L, Mercury – 0.0024 mg/L, Selenium – 0.2385 mg/L, and Silver – 0.0318 mg/L.

## **II. The County’s Violations of the General Permit.**

Based on its review of available public documents, CSPA is informed and believes that the County is in ongoing violation of both the substantive and procedural requirements of the Clean Water Act, as discussed in detail below.

### **A. The County Has Discharged Storm Water Containing Pollutants in Violation of Effluent Limitation B(3), Discharge Prohibition A(2), and Receiving Water Limitations C(1) and C(2).**

The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand, and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Further, Discharge Prohibition A(1) of the General Permit provides: “Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either

eliminated or permitted by a separate NPDES permit.” Special Conditions D(1) of the General Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge. Discharge Prohibition A(2) provides: “Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.”

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

The County has discharged and continues to discharge storm water with unacceptable pH levels and unacceptable levels of Total Suspended Solids, Iron, and Specific Conductance in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. The County’s Annual Reports and Sampling and Analysis Results confirm discharges of specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Effluent Limitation B(3), Discharge Prohibition A(2) and/or Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

**1. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentration in Excess of Applicable EPA Benchmark Value.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
4/11/10	Lower Pond	TSS	203 mg/L	100 mg/L
10/24/12	Lower Pond	TSS	150 mg/L	100 mg/L
2/26/14	Lower Pond	TSS	134 mg/L	100 mg/L



**2. Discharge of Storm Water Containing pH Levels Outside Applicable EPA Benchmark Value.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
2/26/14	Transfer Station	pH	5.78 s.u.	6.0-9.0 s.u.

**3. Discharge of Storm Water Containing Iron (Fe) at Concentration in Excess of Applicable EPA Benchmark.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
4/12/10	Lower Pond	Fe	8.47 mg/L	1 mg/L
2/14/11	Lower Pond	Fe	1.42 mg/L	1 mg/L
3/6/11	Lower Pond	Fe	1.14 mg/L	1 mg/L
10/24/12	Lower Pond	Fe	8.51 mg/L	1 mg/L
2/06/14	Lower Pond	Fe	1.11 mg/L	1 mg/L
2/26/14	Lower Pond	Fe	4.93 mg/L	1 mg/L

**4. Discharge of Storm Water Containing Specific Conductance (SC) at Concentration in Excess of Proposed Benchmark.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
4/11/10	Lower Pond	SC	584 µmhos/cm	200 µmhos/cm
2/14/11	Lower Pond	SC	452 µmhos/cm	200 µmhos/cm
2/16/11	Transfer Station	SC	271 µmhos/cm	200 µmhos/cm
3/6/11	Lower Pond	SC	569 µmhos/cm	200 µmhos/cm

2/29/12	Lower Pond	SC	515 µmhos/cm	200 µmhos/cm
2/29/12	Transfer Station	SC	480 µmhos/cm	200 µmhos/cm
11/28/12	Lower Pond	SC	498 µmhos/cm	200 µmhos/cm
2/26/14	Transfer Station	SC	759 µmhos/cm	200 µmhos/cm
3/26/14	Transfer Station	SC	655 µmhos/cm	200 µmhos/cm

The above samples demonstrate violations of Effluent Limitation B(3). CSPA's investigations, including a review of the County's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's Benchmark values and the State Board's proposed benchmark level for Specific Conductivity, indicates that the County has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, pH, Iron, and Specific Conductance in violation of Effluent Limitation B(3) of the General Permit. The County was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, the County is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

The above samples may also constitute violations of Receiving Water Limitation C(2) of the General Permit, with respect to the discharge of parameters for which the County has failed to undertake testing and which cause or contribute to an exceedance of applicable water quality standards, including CTR limits. The above samples also establish violations of Receiving Water Limitation C(1) of the General Permit, because such discharges adversely impact human health or the environment, and Discharge Prohibition A (2) because the discharges cause or threaten to cause pollution, contamination or nuisance.

CSPA is informed and believes that the County has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least November 13, 2009. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since November 13, 2009, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that the County has discharged storm water containing impermissible levels of Total Suspended Solids, pH, Iron, and Specific Conductance in violation Effluent Limitation B(3), Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Each violation in excess of receiving water limitations and discharge prohibitions is likewise a separate and distinct violation of the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the County is subject to penalties for violations of the General Permit and the Act since November 13, 2009.

**B. The County Has Failed to Implement an Adequate Monitoring & Reporting Plan.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled." Section B(5)(c)(i) further requires that the samples shall be analyzed for Total Suspended Solids, pH, Specific Conductance, and Total Organic Carbon. Oil and Grease may be substituted for Total Organic Carbon. Section B(5)(c)(ii) of the General Permit further requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Section B(10) of the General Permit provides that "Facility operators shall explain how the Facility's monitoring program will satisfy the monitoring program objectives of [General Permit] Section B.2."

Based on their investigations, CSPA is informed and believes that the County has failed to develop and implement an adequate Monitoring & Reporting Plan. As an initial matter, based on its review of publicly available documents, CSPA is informed and believes that the County has failed to collect storm water samples during at least two qualifying storms events, as defined by the General Permit, during at least two of the past five Wet Seasons. Second, based on its review of publicly available documents, CSPA is informed and believes that the County has failed to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the General Permit during at least four of the past five Wet Seasons.

Moreover, the County has failed to analyze storm water samples for all required constituents. As a facility enrolled under SIC Code 4953 the County must also analyze samples for Ammonia, Magnesium, Chemical Oxygen Demand, Arsenic, Cadmium, Cyanide, Lead, Mercury, Selenium, and Silver. See General Permit, Section B(5)(c)(ii) - (iii) and Table D, Section N. It has failed to do so on every occasion that it sampled since

November 13, 2009. Finally, based on its review of publicly available documents, CSPA is informed and believes that the County has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility including: Aluminum – 0.75 mg/L ; Zinc – 0.117 mg/L; Nickel – 1.417 mg/L; and Magnesium – 0.0636 mg/L.

Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the Clean Water Act, the County is subject to penalties for violations of the General Permit and the Act since November 13, 2009. These violations are set forth in greater detail below.

**1. The County Has Failed to Collect Qualifying Storm Water Samples During at Least Two Rain Events During Four of The Last Five Wet Seasons.**

Based on its review of publicly available documents, CSPA is informed and believes that the County has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during four of the past five Wet Seasons, as required by the General Permit. This is so, even though there were many qualifying storm events from which to sample (discussed further below).

The County reported in four of the past five Wet Seasons (i.e., 2010-2011; 2011-2012; 2012-2013; 2013-2014 Wet Seasons), that the Facility sampled the first qualifying storm event of the season, when in fact it did not sample the first storm of the season during those four Wet Seasons. For example, the County reported in its 2013-2014 Annual Report that it sampled the first qualifying storm event of the Wet Season, but the County's first sample is from February 6, 2014. Based upon its review of publicly available rainfall data, CSPA is informed and believes that the first qualifying storm event of the 2013-2014 Wet Season occurred as early as November 19, 2013, when 0.21" of rain fell on the Facility. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

**2. The County Has Failed to Conduct the Monthly Wet Season Observations of Storm Water Discharges Required by the General Permit.**

The General Permit requires dischargers to "visually observe storm water discharges from one storm event per month during the Wet Season (October 1 – May 30)." General Permit, Section B(4)(a). As evidenced by the entries on Form 4 Monthly Visual Observations contained in the County's Annual Reports for the last five Wet Seasons, CSPA is informed and believes that the County has failed to comply with this requirement of the General Permit.

Specifically, the County failed to conduct monthly visual observations of discharges from qualifying storm events for all months during the past five Wet Seasons as required by the General Permit. The County either completely failed to document visual observations at all, or documented its visual observations of storm water that discharged during non-qualifying storm events during the past five Wet Seasons. However, based on publicly available rainfall data, CSPA is informed and believes that there were many qualifying storm events during each of these Wet Seasons that the County could have observed.

For example, the County reported in its 2012-2013 Annual Report that, except for the months of October, November, and February, it did not observe a discharge or there was no rain during the entire Wet Season. Based on its investigation of publicly available rainfall data, CSPA is informed and believes that this could not be possible because there were numerous significant rainfall events during those months. *See* Attachment A. The County's failure to conduct this required monthly Wet Season visual monitoring extends back to at least November 13, 2009, and has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

### **3. The County's Failure to Employ Adequate Testing Methods in Violation of the General Permit Since November 13, 2009.**

The County is in violation of the General Permit's requirement that the testing method employed in laboratory analyses of pollutant concentrations present in storm water discharged from the Facility be "adequate to satisfy the objectives of the monitoring program." General Permit, Section B(10)(a)(iii). The Regional Board has determined the appropriate laboratory test methods to employ when analyzing storm water samples for the presence and concentration of various pollutants, as well as the appropriate detection limits for those testing methods.

However, in every single annual report filed by the County the test methods and detection limits employed by the laboratory utilized to analyze the concentration of the pollutants present in the storm water discharged from its Facility did not comply with the Regional Board requirements. For example, the testing method the County was required to apply for Iron was EPA 200.8 with a detection limit of 0.0005 mg/L. However, in every single Annual Report filed by the County the laboratory utilized test method EPA 200.7 with detection limit of 0.1 mg/L. Further, in every single annual report filed by the County in the past five years the detection limit for Cadmium was actually *above the required detection limit by at least an order of magnitude*. These are just a few of many examples of the County's failure to adequately test the presence and concentration of pollutants at their storm water discharge points.

The County is in violation of the General Permit for failing to employ laboratory test methods that are adequate to, among other things, "ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and



Receiving Water Limitations specified in this General Permit.” General Permit, Section B(2)(a) (“Monitoring Program Objectives”).

CSPA is informed and believes that publicly available documents demonstrate the County’s consistent and ongoing failure to implement an adequate Monitoring and Reporting Program in violation of Section B of the General Permit. Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the County is subject to penalties for these violations of the General Permit and the Act since November 13, 2009.

**4. The County’s Failure to Analyze Storm Water Samples for All Required Constituents.**

The County has failed to analyze storm water samples for all required constituents. Specifically, it has failed to ever analyze samples for Ammonia, Magnesium, Chemical Oxygen Demand, Arsenic, Cadmium, Cyanide, Lead, Mercury, Selenium, and Silver, as required for facilities enrolled under SIC Codes 4953. *See* General Permit, Section B(5)(c)(iii) and Table D, Section N. It has failed to do so on every occasion that it sampled since November 13, 2009. In addition, CSPA is informed and believes that the County has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility including: Aluminum – 0.75 mg/L; Zinc – 0.117 mg/L; Nickel – 1.417 mg/L; and Magnesium – 0.0636 mg/L.

Each failure to sample for all required constituents is a separate and distinct violation of the General Permit and Clean Water Act. Accordingly, the County is subject to penalties for these violations of the General Permit and the Act since November 13, 2009.

**C. The County Has Failed to Implement BAT and BCT.**

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA’s investigations, and the Facility’s exceedances of EPA benchmarks explained above, indicate that the County has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, pH, Iron, Specific Conductance, and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, the County must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum the

County must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. The County has failed to adequately implement such measures.

The County was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, the County has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. The County is subject to penalties for violations of the General Permit and the Act occurring since November 13, 2009.

**D. The County Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 9, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the Facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the Facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective

(General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigations and reviews of publicly available documents regarding conditions at the Facility indicate that the County has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. The County has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, the County has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. The County is subject to penalties for violations of the General Permit and the Act occurring since November 13, 2009.

**E. The County Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP.

The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, the County is discharging elevated levels of Total Suspended Solids, pH, Iron, Specific Conductance, and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, the County was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, the County was aware of high levels of these pollutants long before November 13, 2009. The County has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since November 13, 2009, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. The County is subject to penalties for violations of the General Permit and the Act occurring since November 13, 2009.

**F. The County Has Failed to File Timely, True and Correct Reports.**

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigations indicate that the County has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, the County reported in four Annual Reports filed for the past four Wet Seasons (i.e., 2010-2011, 2011-2012, 2012-2013 and 2013-2014) that it observed storm water discharges occurring during the first storm of those Wet Seasons. However, as discussed above, based on CSPA's review of publicly available rainfall data, CSPA believes this is incorrect.

Further, the County failed to sample from qualifying storm events in two out of last five Wet Seasons in violation of the permit. The County also failed to comply with the monthly visual observations of storm water discharges requirement for five of the past five Annual Reports filed for the Facility. For example, in the 2012-2013 Annual Report, the County did not observe discharge from any qualifying storm events except in the months of October, November, and February, even though there were numerous qualifying storm events to observe.

These are but a few examples of how the County has failed to file completely true and accurate reports. As indicated above, the County has failed to comply with the Permit and the Act consistently for the past five years; therefore, the County has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time the County submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past five years. The County's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. The County is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since November 13, 2009.



**IV. Persons Responsible for the Violations.**

CSPA puts the County and Kasey Kolassa on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts the County and Kasey Kolassa on formal notice that it intends to include those persons in this action.

**V. Name and Address of Noticing Parties.**

The name, address and telephone number of each of the noticing parties is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067

**VI. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard  
Megan Truxillo  
John J. Prager  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard North, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227  
Email: Andrew@PackardLawOffices.com

**VII. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects the County and Kasey Kolassa to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against the County and Kasey Kolassa and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within

Notice of Violation and Intent To File Suit  
November 13, 2014  
Page 17 of 18

the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings", written in a cursive style.

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**SERVICE LIST**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Jared Blumenfeld  
Administrator, U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Eric Holder  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Thomas Howard, Executive Director  
State Water Resources Control Board  
1001 I Street Sacramento, CA 95814  
P.O. Box 100  
Sacramento, CA 95812-0100

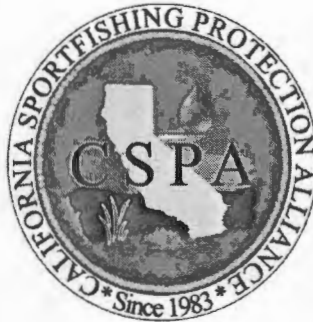
Kenneth A. Harris, Jr., Executive Officer  
Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906

**ATTACHMENT A**  
**Notice of Intent to File Suit, Santa Cruz County**  
**Significant Rain Events,\* November 13, 2009 – November 13, 2014**

December 8, 2009	November 9, 2010	October 6, 2011	February 9, 2014
December 10, 2009	November 9, 2010	November 5, 2011	February 26, 2014
December 11, 2009	November 20, 2010	November 11, 2011	February 28, 2014
December 12, 2009	November 21, 2010	November 19, 2011	March 1, 2014
December 13, 2009	November 22, 2010	November 20, 2011	March 2, 2014
January 12, 2010	November 23, 2010	November 24, 2011	March 5, 2014
January 13, 2010	November 27, 2010	December 15, 2011	April 1, 2014
January 17, 2010	December 5, 2010	January 20, 2012	April 4, 2014
January 18, 2010	December 6, 2010	January 21, 2012	April 25, 2014
January 19, 2010	December 8, 2010	January 22, 2012	September 18, 2014
January 20, 2010	December 14, 2010	January 23, 2012	September 25, 2014
January 21, 2010	December 17, 2010	February 7, 2012	October 31, 2014
January 22, 2010	December 19, 2010	February 13, 2012	November 1, 2014
January 23, 2010	December 20, 2010	March 13, 2012	
January 25, 2010	December 21, 2010	March 14, 2012	
January 26, 2010	December 22, 2010	March 15, 2012	
January 29, 2010	December 25, 2010	March 16, 2012	
February 4, 2010	December 26, 2010	March 17, 2012	
February 5, 2010	December 28, 2010	March 24, 2012	
February 6, 2010	December 29, 2010	March 25, 2012	
February 9, 2010	January 1, 2011	March 27, 2012	
February 12, 2010	January 2, 2011	March 28, 2012	
February 21, 2010	January 29, 2011	March 31, 2012	
February 23, 2010	January 30, 2011	April 10, 2012	
February 24, 2010	February 14, 2011	April 11, 2012	
February 26, 2010	February 15, 2011	April 12, 2012	
February 27, 2010	February 16, 2011	April 13, 2012	
March 2, 2010	February 17, 2011	November 16, 2012	
March 3, 2010	February 18, 2011	November 17, 2012	
March 8, 2010	February 19, 2011	November 18, 2012	
March 10, 2010	February 24, 2011	November 20, 2012	
March 12, 2010	February 25, 2011	November 21, 2012	
March 29, 2010	March 2, 2011	November 30, 2012	
March 30, 2010	March 6, 2011	December 1, 2012	
March 31, 2010	March 13, 2011	December 2, 2012	
April 2, 2010	March 15, 2011	December 5, 2012	
April 4, 2010	March 16, 2011	December 12, 2012	
April 5, 2010	March 19, 2011	December 15, 2012	
April 11, 2010	March 20, 2011	December 16, 2012	
April 12, 2010	March 21, 2011	December 17, 2012	
April 20, 2010	April 13, 2011	December 21, 2012	
April 21, 2010	April 20, 2011	December 22, 2012	
April 27, 2010	April 21, 2011	December 23, 2012	
April 28, 2010	May 14, 2011	January 5, 2013	
May 10, 2010	May 15, 2011	March 7, 2013	
May 25, 2010	May 16, 2011	April 4, 2013	
May 27, 2010	May 17, 2011	November 19, 2013	
October 17, 2010	May 18, 2011	November 20, 2013	
October 22, 2010	May 31, 2011	December 6, 2013	
October 23, 2010	June 4, 2011	December 7, 2013	
October 24, 2010	June 28, 2011	February 2, 2014	
October 29, 2010	October 3, 2011	February 6, 2014	
October 30, 2010	October 4, 2011	February 7, 2014	
November 7, 2010	October 5, 2011	February 8, 2014	

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.





November 5, 2014

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Kasey Kolassa, Recycling and Solid  
Waste Services Manager  
Public Works Department  
Santa Cruz County  
701 Ocean Street, Room 410  
Santa Cruz, CA 95060

Kasey Kolassa, Recycling and Solid  
Waste Services Manager  
Public Works Department  
Santa Cruz County  
150 Rountree Lane  
Watsonville, CA 95076

Kasey Kolassa, Recycling and Solid  
Waste Services Manager  
Public Works Department  
Santa Cruz County  
1231 Buena Vista Lane  
Watsonville, CA 95076

**Re:    Notice of Violations and Intent to File Suit Under the Federal Water  
Pollution Control Act**

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Dear Mr. Kolassa:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at Santa Cruz County's ("the County") Buena Vista Landfill facility located at 1231 Buena Vista Lane, Watsonville California ("the Facility"). The WDID number for the Facility is 344I001258. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including Harkins Slough, Gallighan Slough, the Pajaro River, and the Monterey Bay. This letter is being sent to you as the responsible owners, officers, or operators of the Facility. Unless otherwise noted, Kasey Kolassa, and the County of Santa Cruz shall hereinafter be collectively referred to as "the County."

This letter addresses the County's unlawful discharges of pollutants from the Facility to Harkins Slough and Gallighan Slough, both of which flow to the Pajaro River, which ultimately flows into Monterey Bay. The County is in ongoing violation of the substantive and procedural requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("General Permit" or "General Industrial Storm Water Permit"). Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur. *See* 40 C.F.R. § 135.2.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, the County and Kasey Kolassa are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against the County and Kasey Kolassa under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)) for violations of the Clean Water Act and the General Permit. These violations are described more fully below.

## **I. Background.**

### **A. The Clean Water Act.**

Under the Act, it is unlawful to discharge pollutants from a "point source" to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits "the discharge of any pollutant by any person . . ." except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The General Permit requirement extends to "[a]ny person who discharges or proposes to discharge pollutants. . . ." 40 C.F.R. § 122.30(a).

The term "discharge of pollutants" means "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). "Navigable waters" means "the waters of the United States" and includes, for example, traditionally navigable waters and tributaries to such waters. U.S.C. § 1362(7); 33 C.F.R. § 328.333 (a)(1)-(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters

adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

CSPA is informed and believes, and thereupon alleges, that the County has discharged, and continues to discharge, pollutants from the Facility to waters of the United States, through point sources, in violation of the terms of the General Permit, every day that there has been or will be any measurable discharge of storm water from the Facility since at least April 27, 1992. Each discharge, on each separate day, is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the County is subject to penalties for violations of the Act since November 5, 2009.

#### **B. The County's Facility, Water Quality Standards, and EPA Benchmarks**

The Facility is located at 1231 Buena Vista Lane in the city of Watsonville and discharges indirectly to the Pajaro River. The Facility falls under Standard Industrial Classification ("SIC") Code 4953 ("Hazardous Waste Treatment Storage or Disposal"). Accordingly the County must analyze storm water samples for Total Suspended Solids ("TSS"), pH, Specific Conductance ("SC"), and Total Organic Carbon ("TOC") or Oil and Grease ("O&G"), in addition to Ammonia (NH<sub>3</sub>), Magnesium (Mg), Biological Oxygen Demand ("BOD"), Chemical Oxygen Demand (COD), Arsenic (As), Cadmium (Cd), Cyanide (Cn) Lead (Pb), Mercury (Hg), Selenium (Se), and Silver (Ag). *See* General Permit, Section B(5)(c)(i) - (iii) and at Table D, Sections M and N.

The County submitted a Notice of Intent ("NOI") to discharge under the General Permit in 1992. CSPA's investigations into the industrial activities at the County's approximately 112-acre Facility indicate that the Facility is used to process and store 350 tons of refuse daily, including: waste paper, plastic, metals, and glass; waste oil; scrap metals including aluminum and steel; hazardous waste; waste oils and greases; treated wood wastes; agricultural waste; and electronic waste including scrap household electronic products, computers and peripherals, audio and video components, and telephone equipment. The Facility also stores and processes general industrial and household hazardous waste, including: fluorescent light bulbs, ballasts, paints, stains, solvents, pesticides, herbicides, automotive products, cleaning products, aerosols and pool care chemicals. The County collects and discharges storm water from the Facility through at least four (4) discharge points into Gallighan Slough and Harkins Slough, which flow to the Pajaro River, which ultimately flows into Monterey Bay. The Pajaro River and Monterey Bay are waters of the United States within the meaning of the Clean Water Act.

The Central Coast Regional Water Quality Control Board ("Regional Board") has established water quality standards for the Pajaro River and Monterey Bay in the "Water Quality Control Plan for the Central Coast Basin" ("Basin Plan"). The Basin Plan incorporates in its entirety the State Board's "Water Quality Control Plan for Ocean

Waters of California” (“Ocean Plan”). The Ocean Plan “sets forth limits or levels of water quality characteristics for ocean waters to ensure the reasonable protection of beneficial uses and the prevention of nuisance. The discharge of waste shall not cause violation of these objectives.” *Id.* at 4. The Ocean Plan limits the concentration of organic materials in marine sediment to levels that would not degrade marine life. *Id.* at 6. The Basin Plan establishes ocean water quality objectives, including that dissolved oxygen is not to be less than 7.0 mg/l and pH must be between 7.0 - 8.5 s.u. *Id.* at III-2. It also establishes that toxic metal concentrations in marine habitats shall not exceed: Cu – 0.01 mg/L; Pb – 0.01 mg/L; Hg – 0.0001 mg/L; Ni – 0.002 mg/L; and, Zn – 0.02 mg/L. *Id.* at III-12.

The Basin Plan provides maximum contaminant levels (“MCLs”) for organic concentrations and inorganic and fluoride concentrations, not to be exceeded in domestic or municipal supply. *Id.* at III-6 - III-7. It requires that water designated for use as domestic or municipal supply shall not exceed the following maximum contaminant levels: Aluminum – 1.0 mg/L; Arsenic - 0.05 mg/L; Lead - 0.05 mg/L; and Mercury - 0.002 mg/L. *Id.* at III-7. The EPA has also issued recommended water quality criterion MCLs, or Treatment Techniques, for Mercury - 0.002 mg/L; Lead – 0.015 mg/L; Chromium – 0.1 mg/L; and Copper – 1.3 mg/L.

The EPA has also issued a recommended water quality criterion for Aluminum for freshwater aquatic life protection of 0.087 mg/L. In addition, the EPA has established a secondary MCL, consumer acceptance limit for Aluminum - 0.05 mg/L to 0.2 mg/L, and for Zinc - 5.0 mg/L. See <http://www.epa.gov/safewater/mcl.html>. Finally, the California Department of Health Services has established the following MCL, consumer acceptance levels: Aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); Chromium – 0.5 mg/L (primary); Copper – 1.0 mg/L (secondary); Iron – 0.3 mg/L; and Zinc – 5.0 mg/L. See California Code of Regulations, title 22, §§ 64431, 64449.

The California Toxics Rule (“CTR”), issued by the EPA in 2000, establishes numeric receiving water limits for certain toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: Arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); Chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); Copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); and Lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has identified waters of the Central Coast as failing to meet water quality standards for pollutant/stressors such as unknown toxicity, numerous pesticides, and mercury.<sup>1</sup> Discharges of pollutants into a surface water body may be deemed a “contribution” to an exceedance of the CTR, an applicable water quality

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<sup>1</sup> See [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/2010state\\_ir\\_reports/category5\\_report.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/category5_report.shtml).



standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. See *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); see also *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitations as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by the County: Total Suspended Solids – 100 mg/L;; pH – 6.0 – 9.0 s.u; Iron – 1.0 mg/L,. The State Water Quality Control Board has also proposed adding a benchmark level for Specific Conductance of 200 µmhos/cm and Total Organic Carbon – 110 mg/L. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to: Oil & Grease – 15.0 mg/L, Ammonia – 19 mg/L, Magnesium – 0.0636 mg/L, Biological Oxygen Demand – 30 mg/L, Chemical Oxygen Demand – 120 mg/L, Arsenic – 0.16854 mg/L, Cadmium – 0.0159 mg/L, Cyanide – 0.0636 mg/L, Lead – 0.0816 mg/L, Mercury – 0.0024 mg/L, Selenium – 0.2385 mg/L, and Silver – 0.0318 mg/L.

## **II. The County’s Violations of the General Permit.**

Based on its review of available public documents, CSPA is informed and believes that the County is in ongoing violation of both the substantive and procedural requirements of the Clean Water Act, as discussed in detail below.

### **A. The County Has Discharged Storm Water Containing Pollutants in Violation of Effluent Limitation B(3), Discharge Prohibition A(2), and Receiving Water Limitations C(1) and C(2).**

The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand, and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Further, Discharge Prohibition A(1) of the General Permit provides: “Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm

water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.” Special Conditions D(1) of the General Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge. Discharge Prohibition A(2) provides: “Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.”

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

The County has discharged and continues to discharge storm water with unacceptable pH levels and unacceptable levels of Total Suspended Solids, Iron, and Specific Conductance in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. The County’s Annual Reports and Sampling and Analysis Results confirm discharges of specific pollutants in violation of the General Permit provisions listed above. Self-monitoring reports under the General Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Effluent Limitation B(3), Discharge Prohibition A(2) and/or Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

**1. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentration in Excess of Applicable EPA Benchmark Value.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
4/12/10	Discharge Point 1	TSS	223 mg/L	100 mg/L
4/12/10	Discharge Point 2	TSS	106 mg/L	100 mg/L
4/12/10	Discharge Point 3	TSS	1260 mg/L	100 mg/L
12/14/10	Discharge Point 1	TSS	863 mg/L	100 mg/L

12/14/10	Discharge Point 2	TSS	414 mg/L	100 mg/L
2/14/11	Discharge Point 1	TSS	1920 mg/L	100 mg/L
2/29/12	Discharge Point 1	TSS	1210 mg/L	100 mg/L
2/29/12	Discharge Point 2	TSS	876 mg/L	100 mg/L
2/29/12	Discharge Point 3	TSS	134 mg/L	100 mg/L
10/24/12	Discharge Point 2	TSS	205 mg/L	100 mg/L
11/28/12	Discharge Point 1	TSS	149 mg/L	100 mg/L
11/28/12	Discharge Point 2	TSS	2010 mg/L	100 mg/L
11/28/12	Discharge Point 3	TSS	413 mg/L	100 mg/L
2/6/14	Discharge Point 1	TSS	372 mg/L	100 mg/L
2/6/14	Discharge Point 3	TSS	1350 mg/L	100 mg/L
2/26/14	Discharge Point 1	TSS	202 mg/L	100 mg/L
2/26/14	Discharge Point 2	TSS	1540 mg/L	100 mg/L
3/26/14	Discharge Point 2	TSS	1430 mg/L	100 mg/L
2/28/14	Discharge Point 3	TSS	346 mg/L	100 mg/L

**2. Discharge of Storm Water Containing pH at Levels Outside Applicable EPA Benchmark Value.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
12/14/10	Discharge Point 1	pH	5.96 s.u.	6.0-9.0 s.u.
2/6/14	Discharge Point 3	pH	9.05 s.u.	6.0-9.0 s.u.

**3. Discharge of Storm Water Containing Iron (Fe) at  
Concentration in Excess of Applicable EPA Benchmark.**

<b>Date</b>	<b>Discharge Point</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Benchmark Value</b>
4/12/10	Discharge Point 1	Fe	10.3 mg/L	1 mg/L
4/12/10	Discharge Point 2	Fe	5.68 mg/L	1 mg/L
4/12/10	Discharge Point 3	Fe	156 mg/L	1 mg/L
12/14/10	Discharge Point 1	Fe	22.9 mg/L	1 mg/L
12/14/10	Discharge Point 2	Fe	1.76 mg/L	1 mg/L
12/14/10	Discharge Point 3	Fe	21.4 mg/L	1 mg/L
2/14/11	Discharge Point 1	Fe	68.2 mg/L	1 mg/L
2/14/11	Discharge Point 2	Fe	2.85 mg/L	1 mg/L
2/14/11	Discharge Point 3	Fe	5.65 mg/L	1 mg/L
2/29/12	Discharge Point 1	Fe	36.8 mg/L	1 mg/L
2/29/12	Discharge Point 2	Fe	36.1 mg/L	1 mg/L
2/29/12	Discharge Point 3	Fe	3.17 mg/L	1 mg/L
10/24/12	Discharge Point 1	Fe	2.9 mg/L	1 mg/L
10/24/12	Discharge Point 2	Fe	7.98 mg/L	1 mg/L
10/24/12	Discharge Point 3	Fe	1.25 mg/L	1 mg/L



11/28/12	Discharge Point 1	Fe	12.5 mg/L	1 mg/L
11/28/12	Discharge Point 2	Fe	67.4 mg/L	1 mg/L
11/28/12	Discharge Point 3	Fe	19.8 mg/L	1 mg/L
2/6/14	Discharge Point 1	Fe	12.3 mg/L	1 mg/L
2/6/14	Discharge Point 3	Fe	54.8 mg/L	1 mg/L
2/26/14	Discharge Point 1	Fe	8.55 mg/L	1 mg/L
2/26/14	Discharge Point 2	Fe	25.5 mg/L	1 mg/L
3/26/14	Discharge Point 2	Fe	42.8 mg/L	1 mg/L
3/26/14	Discharge Point 3	Fe	10.3 mg/L	1 mg/L

**4. Discharge of Storm Water Containing Specific Conductance (SC) at Concentration in Excess of Proposed Benchmark.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
4/12/10	Discharge Point 1	SC	350 µmhos/cm	200 µmhos/cm
4/12/10	Discharge Point 2	SC	388 µmhos/cm	200 µmhos/cm
4/12/10	Discharge Point 3	SC	582 µmhos/cm	200 µmhos/cm
12/14/10	Discharge Point 1	SC	433 µmhos/cm	200 µmhos/cm
12/14/10	Discharge Point 2	SC	692 µmhos/cm	200 µmhos/cm
12/14/10	Discharge Point 3	SC	775 µmhos/cm	200 µmhos/cm

2/14/11	Discharge Point 1	SC	242 µmhos/cm	200 µmhos/cm
2/14/11	Discharge Point 2	SC	585 µmhos/cm	200 µmhos/cm
2/14/11	Discharge Point 3	SC	245 µmhos/cm	200 µmhos/cm
2/29/12	Discharge Point 1	SC	1220 µmhos/cm	200 µmhos/cm
2/29/12	Discharge Point 2	SC	744 µmhos/cm	200 µmhos/cm
2/29/12	Discharge Point 3	SC	1458 µmhos/cm	200 µmhos/cm
10/24/12	Discharge Point 1	SC	552 µmhos/cm	200 µmhos/cm
10/24/12	Discharge Point 2	SC	739 µmhos/cm	200 µmhos/cm
10/24/12	Discharge Point 3	SC	1195 µmhos/cm	200 µmhos/cm
11/28/12	Discharge Point 2	SC	268 µmhos/cm	200 µmhos/cm

The above samples demonstrate violations of Effluent Limitation B(3). CSPA's investigations, including a review of the County's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's Benchmark values and the State Board's proposed benchmark level for Specific Conductivity, indicates that the County has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, pH, Iron, and Specific Conductance in violation of Effluent Limitation B(3) of the General Permit. The County was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, the County is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

The above samples may also constitute violations of Receiving Water Limitation C(2) of the General Permit, with respect to the discharge of parameters for which the County has failed to undertake testing and which cause or contribute to an exceedance of applicable water quality standards, including CTR limits. The above samples also establish violations of Receiving Water Limitation C(1) of the General Permit, because such discharges adversely impact human health or the environment, and Discharge Prohibition A (2) because the discharges cause or threaten to cause pollution, contamination or nuisance.

CSPA is informed and believes that the County has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least November 5, 2009. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since November 5, 2009, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that the County has discharged storm water containing impermissible levels of Total Suspended Solids, pH, Iron, and Specific Conductance in violation Effluent Limitation B(3), Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Each violation in excess of receiving water limitations and discharge prohibitions is likewise a separate and distinct violation of the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the County is subject to penalties for violations of the General Permit and the Act since November 5, 2009.

**B. The County Has Failed to Implement an Adequate Monitoring & Reporting Plan.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled."

Section B(5)(c)(i) further requires that the samples shall be analyzed for Total Suspended Solids, pH, Specific Conductance, and Total Organic Carbon. Oil and Grease may be substituted for Total Organic Carbon. Section B(5)(c)(ii) of the General Permit further requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Section B(10) of the General Permit provides that "Facility operators shall explain how the Facility's monitoring program will satisfy the monitoring program objectives of [General Permit] Section B.2."

Based on their investigations, CSPA is informed and believes that the County has failed to develop and implement an adequate Monitoring & Reporting Plan. As an initial

matter, based on its review of publicly available documents, CSPA is informed and believes that the County has failed to collect storm water samples during at least two qualifying storms events, as defined by the General Permit, during at least four of the past five Wet Seasons. Second, based on its review of publicly available documents, CSPA is informed and believes that the County has failed to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the General Permit during the past five Wet Seasons.

Moreover, the County has failed to analyze storm water samples for all required constituents. As a facility enrolled under SIC Code 4953 the County must also analyze samples for Ammonia, Magnesium, Biological Oxygen Demand, Chemical Oxygen Demand, Arsenic, Cadmium, Cyanide, Lead, Mercury, Selenium and Silver. *See* General Permit, Section B(5)(c)(ii) – (iii) and Table D, Section N. It has failed to do so on every occasion that it sampled since November 5, 2009. Finally, based on its review of publicly available documents, CSPA is informed and believes that the County has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility including: Aluminum – 0.75 mg/L ; Zinc – 0.117 mg/L; Nickel – 1.417 mg/L; and Magnesium – 0.0636 mg/L.

Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the Clean Water Act, the County is subject to penalties for violations of the General Permit and the Act since November 5, 2009. These violations are set forth in greater detail below.

**1. The County Has Failed to Collect Qualifying Storm Water Samples During at Least Two Rain Events During Four of The Last Five Wet Seasons.**

Based on its review of publicly available documents, CSPA is informed and believes that the County has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during four of the past five Wet Seasons, as required by the General Permit. This is so, even though there were many qualifying storm events from which to sample (discussed further below).

The County reported in four of the past five Wet Seasons (i.e., 2010-2011; 2011-2012; 2012-2013; 2013-2014 Wet Seasons), that the Facility sampled the first qualifying storm event of the season, when in fact it did not sample the first storm of the season during those four Wet Seasons. For example, the County reported in its 2010-2011 Annual Report that it sampled the first qualifying storm event of the Wet Season, but the County's first sample is from December 14, 2010. Based upon its review of publicly available rainfall data, CSPA is informed and believes that the first qualifying storm event of the 2010-2011 Wet Season occurred as early as October 17, 2009, when 0.17" of



rain fell on the Facility. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

**2. The County Has Failed to Conduct the Monthly Wet Season Observations of Storm Water Discharges Required by the General Permit.**

The General Permit requires dischargers to “visually observe storm water discharges from one storm event per month during the Wet Season (October 1 – May 30).” General Permit, Section B(4)(a). As evidenced by the entries on Form 4 Monthly Visual Observations contained in the County’s Annual Reports for four of the last five Wet Seasons, CSPA is informed and believes that the County has failed to comply with this requirement of the General Permit.

Specifically, the County failed to conduct monthly visual observations of discharges from qualifying storm events for all months during four of the past five Wet Seasons as required by the General Permit. The County either completely failed to document visual observations at all, or documented its visual observations of storm water that discharged during non-qualifying storm events during four of the past five Wet Seasons. However, based on publicly available rainfall data, CSPA is informed and believes that there were many qualifying storm events during each of these Wet Seasons that the County could have observed.

For example, the County reported in its 2011-2012 Annual Report that, except for the month of February, it did not observe a discharge or there was no rain during the entire Wet Season. Based on its investigation of publicly available rainfall data, CSPA is informed and believes that this could not be possible because there were numerous significant rainfall events during those months. *See Attachment A.* the County’s failure to conduct this required monthly Wet Season visual monitoring extends back to at least November 5, 2009, and has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

**3. The County’s Failure to Analyze Storm Water Samples for All Required Constituents.**

The County has failed to analyze storm water samples for all required constituents. Specifically, it has failed to ever analyze samples for Ammonia, Magnesium, Biological Oxygen Demand, Chemical Oxygen Demand, Arsenic, Cadmium, Cyanide, Lead, Mercury, Selenium, and Silver, as required for facilities enrolled under SIC Codes 4953. *See General Permit, Section B(5)(c)(iii) and Table D, Section N.* It has failed to do so on every occasion that it sampled since November 5, 2009. In addition, CSPA is informed and believes that the County has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility, including: Aluminum -- 0.75 mg/L; Zinc – 0.117 mg/L; Nickel – 1.417 mg/L; and Magnesium – 0.0636 mg/L.

Each failure to sample for all required constituents is a separate and distinct violation of the General Permit and Clean Water Act. Accordingly, the County is subject to penalties for these violations of the General Permit and the Act since November 5, 2009.

**C. The County Has Failed to Implement BAT and BCT.**

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigations, and the Facility's exceedances of EPA benchmarks explained above, indicate that the County has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, pH, Iron, Specific Conductance, and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, the County must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum the County must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. The County has failed to adequately implement such measures.

The County was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, the County has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. The County is subject to penalties for violations of the General Permit and the Act occurring since November 5, 2009.

**D. The County Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 9, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the Facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)).

The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the Facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigations and reviews of publicly available documents regarding conditions at the Facility indicate that the County has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. The County has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, the County has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. The County is subject to penalties for violations of the General Permit and the Act occurring since November 5, 2009.

**E. The County Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP.

The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the General Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the General Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, the County is discharging elevated levels of Total Suspended Solids, pH, Iron, Specific Conductance, and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, the County was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, the County was aware of high levels of these pollutants long before November 5, 2009. The County has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since November 5, 2009, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. The County is subject to penalties for violations of the General Permit and the Act occurring since November 5, 2009.

**F. The County Has Failed to File Timely, True and Correct Reports.**

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).



CSPA's investigations indicate that the County has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, the County reported in four Annual Reports filed for the past four Wet Seasons (i.e., 2010-2011, 2011-2012, 2012-2013 and 2013-2014) that it observed storm water discharges occurring during the first storm of those Wet Seasons. However, as discussed above, based on CSPA's review of publicly available rainfall data, CSPA believes this is incorrect.

Further, the County failed to sample from qualifying storm events in two out of last five Wet Seasons in violation of the General Permit. The County also failed to comply with the monthly visual observations of storm water discharges requirement for five of the past five Annual Reports filed for the Facility. For example, in the 2010-2011 Annual Report, the County did not observe discharge from any qualifying storm events except in the month of February, even though there were numerous qualifying storm events to observe.

These are but a few examples of how the County has failed to file completely true and accurate reports. As indicated above, the County has failed to comply with the General Permit and the Act consistently for the past five years; therefore, the County has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Permit every time the County submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past five years. The County's failure to submit true and complete reports constitutes continuous and ongoing violations of the General Permit and the Act. The County is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since November 5, 2009.

#### **IV. Persons Responsible for the Violations.**

CSPA puts the County and Kasey Kolassa on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts the County and Kasey Kolassa on formal notice that it intends to include those persons in this action.

#### **V. Name and Address of Noticing Parties.**

The name, address and telephone number of each of the noticing parties is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067

#### **VI. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

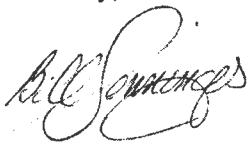
Andrew L. Packard  
Megan Truxillo  
John J. Prager  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard North, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227  
Email: Andrew@PackardLawOffices.com

**VII. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects the County and Kasey Kolassa to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against the County and Kasey Kolassa and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings", with a stylized flourish at the end.

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**SERVICE LIST**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Jared Blumenfeld  
Administrator, U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Eric Holder  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Thomas Howard, Executive Director  
State Water Resources Control Board  
1001 I Street Sacramento, CA 95814  
P.O. Box 100  
Sacramento, CA 95812-0100

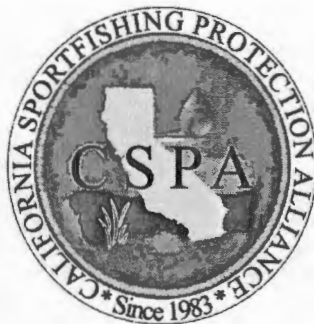
Kenneth A. Harris, Jr., Executive Officer  
Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906

**ATTACHMENT A**  
**Notice of Intent to File Suit, Santa Cruz County**  
**Significant Rain Events,\* November 5, 2009 – November 5, 2014**

December 7, 2009	December 5, 2010	January 21, 2012	February 19, 2013
December 11, 2009	December 17, 2010	January 22, 2012	March 6, 2013
December 12, 2009	December 18, 2010	January 23, 2012	March 7, 2013
December 13, 2009	December 19, 2010	February 7, 2012	March 31, 2013
December 26, 2009	December 25, 2010	February 13, 2012	April 1, 2013
December 27, 2009	December 28, 2010	February 29, 2012	April 4, 2013
January 12, 2010	December 29, 2010	March 1, 2012	April 7, 2013
January 13, 2010	January 1, 2011	March 13, 2012	October 29, 2013
January 17, 2010	January 2, 2011	March 14, 2012	November 19, 2013
January 18, 2010	January 30, 2011	March 15, 2012	November 20, 2013
January 19, 2010	February 16, 2011	March 16, 2012	December 7, 2013
January 20, 2010	February 17, 2011	March 17, 2012	February 2, 2014
January 22, 2010	February 18, 2011	March 24, 2012	February 6, 2014
January 26, 2010	February 19, 2011	March 25, 2012	February 7, 2014
January 29, 2010	February 25, 2011	March 27, 2012	February 8, 2014
February 4, 2010	March 13, 2011	March 31, 2012	February 9, 2014
February 6, 2010	March 14, 2011	April 10, 2012	February 26, 2014
February 9, 2010	March 15, 2011	April 12, 2012	February 28, 2014
February 21, 2010	March 16, 2011	April 13, 2012	March 1, 2014
February 23, 2010	March 18, 2011	April 25, 2012	March 6, 2014
February 24, 2010	March 19, 2011	April 26, 2012	March 26, 2014
February 26, 2010	March 20, 2011	June 4, 2012	March 29, 2014
February 27, 2010	March 21, 2011	October 22, 2012	March 31, 2014
March 2, 2010	March 22, 2011	November 1, 2012	April 1, 2014
March 3, 2010	March 23, 2011	November 8, 2012	April 25, 2014
March 10, 2010	March 24, 2011	November 9, 2012	September 18, 2014
March 12, 2010	March 25, 2011	November 16, 2012	September 25, 2014
April 2, 2010	March 26, 2011	November 17, 2012	October 25, 2014
April 4, 2010	April 7, 2011	November 18, 2012	October 31, 2014
April 11, 2010	May 14, 2011	November 21, 2012	
April 12, 2010	May 15, 2011	November 28, 2012	
April 20, 2010	May 16, 2011	November 30, 2012	
April 27, 2010	May 17, 2011	December 1, 2012	
April 28, 2010	May 25, 2011	December 2, 2012	
May 10, 2010	May 28, 2011	December 5, 2012	
October 17, 2010	June 4, 2011	December 12, 2012	
October 23, 2010	June 28, 2011	December 15, 2012	
October 24, 2010	October 3, 2011	December 17, 2012	
October 30, 2010	October 4, 2011	December 22, 2012	
November 7, 2010	October 5, 2011	December 23, 2012	
November 19, 2010	November 5, 2011	December 25, 2012	
November 20, 2010	November 11, 2011	December 26, 2012	
November 21, 2010	November 19, 2011	December 29, 2012	
November 23, 2010	November 20, 2011	January 5, 2013	
November 27, 2010	January 20, 2012	January 6, 2013	

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.





November 19, 2014

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Kasey Kolassa, Recycling and Solid  
Waste Services Manager  
Public Works Department  
Santa Cruz County  
701 Ocean Street, Room 410  
Santa Cruz, CA 95060

Kasey Kolassa, Recycling and Solid  
Waste Services Manager  
Public Works Department  
Santa Cruz County  
198 Grimmer Road  
Watsonville, CA 95076

Re: Notice of Violations and Intent to File Suit  
Under the Federal Water Pollution Control Act

Dear Mr. Kolassa:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at Santa Cruz County's ("the County") school bus maintenance facility located at 198 Grimmer Road, Watsonville, California ("the Facility"). The WDID number for the Facility is 3 44S002829. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including Corralitos Creek, Salispuedes Creek, the Pajaro River, and Monterey Bay. This letter is being sent to you as the responsible owners, officers, or operators of the Facility. Unless otherwise noted, Santa Cruz County and Kasey Kolassa shall hereinafter be collectively referred to as "the County."

This letter addresses the County's unlawful discharges of pollutants from the Facility to Corralitos Creek, Salispuedes Creek, the Pajaro River, and Monterey Bay.

The County is in ongoing violation of the substantive and procedural requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ (“General Permit” or “General Industrial Storm Water Permit”). Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur. *See* 40 C.F.R. § 135.2.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Santa Cruz County and Kasey Kolassa are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against Santa Cruz County and Kasey Kolassa under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)) for violations of the Clean Water Act and the General Permit. These violations are described more fully below.

## **I. Background.**

### **A. The Clean Water Act.**

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutant by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The permit requirement extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.30(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). “Navigable waters” means “the waters of the United States” and includes, for example, traditionally navigable waters and tributaries to such waters. U.S.C. § 1362(7); 33 C.F.R. § 328.333 (a)(1)-(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

CSPA is informed and believes, and thereupon alleges, that the County has discharged, and continues to discharge, pollutants from the Facility to waters of the United States, through point sources, in violation of the terms of the General Permit, every day that there has been or will be any measurable discharge of storm water from the Facility since at least August 3, 1998. Each discharge, on each separate day, is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the County is subject to penalties for violations of the Act since November 19, 2009.

#### **B. The County's Facility, Water Quality Standards, and EPA Benchmarks**

The Facility is located at 198 Grimmer Road in the city of Watsonville and discharges directly to Corralitos Creek, which flows to Salispuedes Creek, then to the Pajaro River, and ultimately Monterey Bay. The Facility falls under Standard Industrial Classification (SIC) Codes 5171 (Petroleum Bulk Stations and Terminals) and 4151 (School Buses). Accordingly the County must analyze storm water samples for Total Suspended Solids (TSS), pH, Specific Conductance (SC), and Total Organic Carbon (TOC) or Oil and Grease (O&G). The County submitted a Notice of Intent (NOI) to discharge under the General Permit in 1998. CSPA's investigations into the industrial activities at the County's approximately 5-acre Facility indicate that the Facility is used to store, service, wash, dismantle, maintain, and re-fuel the County's school bus fleet. The County collects and discharges storm water from the Facility through at least three (3) discharge points into Corralitos Creek, which flows into Salispuedes Creek, which then flows to the Pajaro River, and Monterey Bay. Corralitos Creek, Salispuedes Creek, the Pajaro River and Monterey Bay are waters of the United States within the meaning of the Clean Water Act.

The Central Coast Regional Water Quality Control Board ("Regional Board") has established water quality standards for Corralitos Creek, Salispuedes Creek, the Pajaro River, and Monterey Bay in the "Water Quality Control Plan for the Central Coast Basin" ("Basin Plan"). The Basin Plan incorporates in its entirety the State Board's "Water Quality Control Plan for Ocean Waters of California" ("Ocean Plan"). The Ocean Plan "sets forth limits or levels of water quality characteristics for ocean waters to ensure the reasonable protection of beneficial uses and the prevention of nuisance. The discharge of waste shall not cause violation of these objectives." *Id.* at 4. The Ocean Plan limits the concentration of organic materials in marine sediment to levels that would not degrade marine life. *Id.* at 6. The Basin Plan establishes ocean water quality objectives, including that dissolved oxygen is not to be less than 7.0 mg/l and pH must be between 7.0 - 8.5 s.u. *Id.* at III-2. It also establishes that toxic metal concentrations in marine habitats shall not exceed: Cu – 0.01 mg/L; Pb – 0.01 mg/L; Hg – 0.0001 mg/L; Ni – 0.002 mg/L; and, Zn – 0.02 mg/L. *Id.* at III-12.

The Basin Plan provides maximum contaminant levels ("MCLs") for organic concentrations and inorganic and fluoride concentrations, not to be exceeded in domestic

or municipal supply. *Id.* at III-6 - III-7. It requires that water designated for use as domestic or municipal supply shall not exceed the following maximum contaminant levels: Aluminum – 1.0 mg/L; Arsenic - 0.05 mg/L; Lead - 0.05 mg/L; and Mercury - 0.002 mg/L. *Id.* at III-7. The EPA has also issued recommended water quality criterion MCLs, or Treatment Techniques, for Mercury - 0.002 mg/L; lead – 0.015 mg/L; Chromium – 0.1 mg/L; and, Copper – 1.3 mg/L.

The EPA has also issued a recommended water quality criterion for aluminum for freshwater aquatic life protection of 0.087 mg/L. In addition, the EPA has established a secondary MCL, consumer acceptance limit for Aluminum - 0.05 mg/L to 0.2 mg/L, and for Zinc - 5.0 mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. Finally, the California Department of Health Services has established the following MCL, consumer acceptance levels: Aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); Chromium – 0.5 mg/L (primary); Copper – 1.0 mg/L (secondary); Iron – 0.3 mg/L; and Zinc – 5.0 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

The California Toxics Rule (“CTR”), issued by the EPA in 2000, establishes numeric receiving water limits for certain toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: Arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); Chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); Copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); and Lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has identified waters of the Central Coast as failing to meet water quality standards for pollutant/stressors such as unknown toxicity, numerous pesticides, and mercury.<sup>1</sup> Discharges of pollutants into a surface water body may be deemed a “contribution” to an exceedance of the CTR, an applicable water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitations as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks

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<sup>1</sup> *See* [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/2010state\\_ir\\_reports/category5\\_report.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/category5_report.shtml).



have been established for pollutants discharged by the County: pH – 6-9 s.u.; Total Suspended Solids – 100 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for Specific Conductance of 200 µmhos/cm and Total Organic Carbon – 110 mg/L. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to: Oil & Grease – 15.0 mg/L, Iron – 1.0 mg/L; Aluminum – 0.75 mg/L; Copper – 0.0636 mg/L; Lead – 0.0816 mg/L; and Zinc – 0.117 mg/L.

## **II. The County's Violations of the General Permit.**

Based on its review of available public documents, CSPA is informed and believes that the County is in ongoing violation of both the substantive and procedural requirements of the Clean Water Act, as discussed in detail below.

### **A. The County Has Discharged Storm Water Containing Pollutants in Violation of Effluent Limitation B(3), Discharge Prohibition A(2), and Receiving Water Limitations C(1) and C(2).**

The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand, and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Further, Discharge Prohibition A(1) of the General Permit provides: "Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit." Special Conditions D(1) of the General Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge. Discharge Prohibition A(2) provides: "Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

The County has discharged and continues to discharge storm water unacceptable levels of Total Suspended Solids, Specific Conductance, and pH in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. The County's Annual Reports and Sampling and Analysis Results confirm discharges of specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Effluent Limitation B(3), Discharge Prohibition A(2) and/or Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

**1. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentration in Excess of Applicable EPA Benchmark Value.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
2/29/12	Discharge Point 3	TSS	472 mg/L	100 mg/L
11/28/12	Discharge Point 3	TSS	137 mg/L	100 mg/L
2/06/14	Discharge Point 1	TSS	135 mg/L	100 mg/L
2/06/14	Discharge Point 2	TSS	178 mg/L	100 mg/L
2/06/14	Discharge Point 3	TSS	182 mg/L	100 mg/L

**2. Discharge of Storm Water Containing Specific Conductance (SC) at Concentration in Excess of Proposed Benchmark.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
4/12/10	Discharge Point 3	SC	346 µmhos/cm	200 µmhos/cm
2/14/11	Discharge Point 3	SC	467 µmhos/cm	200 µmhos/cm

2/29/12	Discharge Point 1	SC	468 µmhos/cm	200 µmhos/cm
2/29/12	Discharge Point 3	SC	489 µmhos/cm	200 µmhos/cm
11/1/12	Discharge Point 2	SC	684 µmhos/cm	200 µmhos/cm
2/26/14	Discharge Point 2	SC	609 µmhos/cm	200 µmhos/cm
2/26/14	Discharge Point 3	SC	224 µmhos/cm	200 µmhos/cm

**3. Discharge of Storm Water Containing pH at Levels Outside Applicable EPA Benchmark Value.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
2/28/14	Discharge Point 1	pH	5.65 s.u.	6-9 s.u.

The above samples demonstrate violations of Effluent Limitation B(3). CSPA's investigations, including a review of the County's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's Benchmark values and the State Board's proposed benchmark level for Specific Conductivity, indicates that the County has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, pH, and Specific Conductance in violation of Effluent Limitation B(3) of the General Permit. The County was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, the County is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

The above samples may also constitute violations of Receiving Water Limitation C(2) of the General Permit, with respect to the discharge of parameters for which the County has failed to undertake testing and which cause or contribute to an exceedance of applicable water quality standards, including CTR limits. The above samples also establish violations of Receiving Water Limitation C(1) of the General Permit, because such discharges adversely impact human health or the environment, and Discharge Prohibition A (2) because the discharges cause or threaten to cause pollution, contamination or nuisance.

CSPA is informed and believes that the County has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least November 19, 2009. CSPA alleges that such violations also have occurred

and will occur on other rain dates, including during every single significant rain event that has occurred since November 19, 2009, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that the County has discharged storm water containing impermissible levels of Total Suspended Solids, pH, and Specific Conductance in violation Effluent Limitation B(3), Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Each violation in excess of receiving water limitations and discharge prohibitions is likewise a separate and distinct violation of the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the County is subject to penalties for violations of the General Permit and the Act since November 19, 2009.

**B. The County Has Failed to Implement an Adequate Monitoring & Reporting Program.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Program by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled." Section B(5)(c)(i) further requires that the samples shall be analyzed for Total Suspended Solids, Specific Conductance, pH, and Total Organic Carbon. Oil and Grease may be substituted for Total Organic Carbon. Section B(5)(c)(ii) of the General Permit further requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Section B(10) of the General Permit provides that "Facility operators shall explain how the Facility's monitoring program will satisfy the monitoring program objectives of [General Permit] Section B.2."

Based on their investigations, CSPA is informed and believes that the County has failed to develop and implement an adequate Monitoring & Reporting Plan. As an initial matter, based on its review of publicly available documents, CSPA is informed and believes that the County has failed to collect storm water samples during at least two qualifying storms events, as defined by the General Permit, during at least three of the past five Wet Seasons. Second, the County has failed to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of



unauthorized non-storm water discharges required under the General Permit during the past five Wet Seasons.

Finally, based on its review of publicly available documents, CSPA is informed and believes that the County has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility including: Iron – 1.0 mg/L; Aluminum – 0.75 mg/L; Copper – 0.0636 mg/L , Lead – 0.0816 mg/L and Zinc – 0.117 mg/L

Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the Clean Water Act, the County is subject to penalties for violations of the General Permit and the Act since November 19, 2009. These violations are set forth in greater detail below.

**1. The County Has Failed to Collect Qualifying Storm Water Samples During at Least Two Rain Events During Three of The Last Five Wet Seasons.**

Based on its review of publicly available documents, CSPA is informed and believes that the County has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during three of the past five Wet Seasons, as required by the General Permit. This is so, even though there were many qualifying storm events from which to sample (discussed further below).

For the past four Wet Seasons, the County has either reported that it did not sample the first qualifying storm event of the season or has falsely reported that it had sampled the first qualifying storm event of the season, when in fact the County failed to do so. For example, the County reported in its 2011-2012 Annual Report that it sampled the first qualifying storm event of the Wet Season, but the County's first sample is from February 29, 2012. Based upon its review of publicly available rainfall data, CSPA is informed and believes that the first qualifying storm event of the 2011-2012 Wet Season occurred as early as October 5, 2011, when 0.6" of rain fell on the Facility. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

**2. The County Has Failed to Conduct the Monthly Wet Season Observations of Storm Water Discharges Required by the General Permit.**

The General Permit requires dischargers to "visually observe storm water discharges from one storm event per month during the Wet Season (October 1 – May 30)." General Permit, Section B(4)(a). As evidenced by the entries on Form 4 Monthly Visual Observations contained in the County's Annual Reports for three of the last five Wet Seasons, CSPA is informed and believes that the County has failed to comply with

this requirement of the General Permit.

Specifically, the County failed to conduct monthly visual observations of discharges from qualifying storm events for all months during three of the past five Wet Seasons as required by the General Permit. The County either completely failed to document visual observations at all, or documented its visual observations of storm water that discharged during non-qualifying storm events during three of the past five Wet Seasons. However, based on publicly available rainfall data, CSPA is informed and believes that there were many qualifying storm events during each of these Wet Seasons that the County could have observed.

For example, the County reported in its 2011-2012 Annual Report that, except for the months of February, March, and April it did not observe a discharge or there was no rain during the entire Wet Season. Based on its investigation of publicly available rainfall data, CSPA is informed and believes that this could not be possible because there were numerous significant rainfall events during those months. *See Attachment A.* The County's failure to conduct this required monthly Wet Season visual monitoring extends back to at least November 19, 2009, and has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

### **3. The County's Failure to Analyze Storm Water Samples for All Required Constituents.**

The General Permit requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." General Permit Section B(5)(c)(ii). CSPA is informed and believes that the County has violated the General Permit by failing to analyze samples for pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility during the past five Wet Seasons including: Magnesium – 0.0636 mg/L, Chemical Oxygen Demand – 120 mg/L, Mercury – 0.0024 mg/L, Selenium – 0.2385 mg/L, and Silver – 0.0318 mg/L.

Each failure to sample for all required constituents is a separate and distinct violation of the General Permit and Clean Water Act. Accordingly, the County is subject to penalties for these violations of the General Permit and the Act since November 19, 2009.

### **C. The County Has Failed to Implement BAT and BCT.**

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigations, and the Facility's exceedances of EPA benchmarks explained above, indicate that the County has not implemented BAT and BCT at the Facility for its

discharges of Total Suspended Solids, Specific Conductance, pH, and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, the County must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum the County must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. The County has failed to adequately implement such measures.

The County was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, the County has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. The County is subject to penalties for violations of the General Permit and the Act occurring since November 19, 2009.

**D. The County Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 9, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the Facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the Facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities,

a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigations and reviews of publicly available documents regarding conditions at the Facility indicate that the County has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. The County has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, the County has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. The County is subject to penalties for violations of the General Permit and the Act occurring since November 19, 2009.

**E. The County Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP.

The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.



As indicated above, the County is discharging elevated levels of Total Suspended Solids, Specific Conductance, pH, and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, the County was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, the County was aware of high levels of these pollutants long before November 19, 2009. The County has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since November 19, 2009, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. The County is subject to penalties for violations of the General Permit and the Act occurring since November 19, 2009.

**F. The County Has Failed to File Timely, True and Correct Reports.**

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigations indicate that the County has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, the County reported in four Annual Reports filed for the past four Wet Seasons (i.e., 2010-2011, 2011-2012, 2012-2013 and 2013-2014) that it observed storm water discharges occurring during the first storm of those Wet Seasons. However, as discussed above, based on CSPA's review of publicly available rainfall data, CSPA believes this is incorrect.

Further, the County failed to sample from qualifying storm events in three out of last five Wet Seasons in violation of the permit. For example in the 2010-2011 Annual Report the County reported that it sampled from a storm event on February 16, 2011. However based on publicly available rainfall data CSPA is informed and believes that it the storm that occurred at the Facility on February 16, 2011 was not a qualifying storm event because 0.23 inches of rain fell on the Facility on February 14, 2011. Thus, the February 14th storm event rendered any storm occurring for three days afterwards non-qualifying under the General Permit.

These are but a few examples of how the County has failed to file completely true and accurate reports. As indicated above, the County has failed to comply with the

Permit and the Act consistently for the past five years; therefore, the County has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time the County submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past five years. The County's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. The County is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since November 19, 2009.

**IV. Persons Responsible for the Violations.**

CSPA puts Santa Cruz County and Kasey Kolassa on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Santa Cruz County and Kasey Kolassa on formal notice that it intends to include those persons in this action.

**V. Name and Address of Noticing Parties.**

The name, address and telephone number of each of the noticing parties is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067

**VI. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard  
Megan Truxillo  
John J. Prager  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard North, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227  
Email: Andrew@PackardLawOffices.com

**VII. Penalties.**

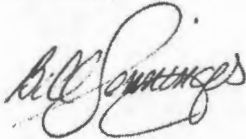
Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Santa Cruz County and Kasey Kolassa to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted

Notice of Violation and Intent To File Suit  
November 19, 2014  
Page 15 of 16

by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Santa Cruz County and Kasey Kolassa and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bill Jennings", is written over a horizontal line.

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**SERVICE LIST**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Jared Blumenfeld  
Administrator, U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Eric Holder  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Thomas Howard, Executive Director  
State Water Resources Control Board  
1001 I Street Sacramento, CA 95814  
P.O. Box 100  
Sacramento, CA 95812-0100

Kenneth A. Harris, Jr., Executive Officer  
Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906

**ATTACHMENT A**  
**Notice of Intent to File Suit, Santa Cruz County**  
**Significant Rain Events,\* November 19, 2009 – November 19, 2014**

December 7, 2009	October 2, 2010	May 17, 2011	December 5, 2012
December 10, 2009	October 23, 2010	May 18, 2011	December 15, 2012
December 11, 2009	October 24, 2010	June 4, 2011	December 17, 2012
December 12, 2009	November 19, 2010	June 28, 2011	December 22, 2012
December 13, 2009	November 20, 2010	October 5, 2011	December 23, 2012
December 21, 2009	November 21, 2010	November 4, 2011	December 25, 2012
December 26, 2009	November 23, 2010	November 5, 2011	December 26, 2012
December 27, 2009	November 27, 2010	November 11, 2011	December 29, 2012
December 28, 2009	December 5, 2010	November 18, 2011	January 5, 2013
January 12, 2010	December 14, 2010	November 19, 2011	January 6, 2013
January 13, 2010	December 17, 2010	November 20, 2011	January 24, 2013
January 17, 2010	December 18, 2010	January 19, 2012	February 16, 2013
January 18, 2010	December 19, 2010	January 20, 2012	March 6, 2013
January 19, 2010	December 21, 2010	January 21, 2012	March 7, 2013
January 20, 2010	December 22, 2010	January 22, 2012	April 1, 2013
January 21, 2010	December 25, 2010	January 23, 2012	April 4, 2013
January 22, 2010	December 28, 2010	February 7, 2012	October 29, 2013
January 26, 2010	December 29, 2010	February 13, 2012	November 19, 2013
January 29, 2010	January 1, 2011	February 15, 2012	November 20, 2013
February 4, 2010	January 2, 2011	February 29, 2012	December 6, 2013
February 6, 2010	January 30, 2011	March 1, 2012	December 7, 2013
February 9, 2010	February 14, 2011	March 16, 2012	January 30, 2014
February 21, 2010	February 16, 2011	March 17, 2012	February 2, 2014
February 23, 2010	February 17, 2011	March 18, 2012	February 6, 2014
February 24, 2010	February 18, 2011	March 24, 2012	February 7, 2014
February 26, 2010	February 19, 2011	March 25, 2012	February 8, 2014
February 27, 2010	February 24, 2011	March 27, 2012	February 9, 2014
March 2, 2010	February 25, 2011	March 28, 2012	February 26, 2014
March 3, 2010	February 26, 2011	March 31, 2012	February 27, 2014
March 12, 2010	March 13, 2011	April 10, 2012	February 28, 2014
March 30, 2010	March 16, 2011	April 11, 2012	March 1, 2014
April 4, 2010	March 18, 2011	April 12, 2012	March 3, 2014
April 5, 2010	March 19, 2011	April 13, 2012	March 26, 2014
April 11, 2010	March 20, 2011	April 15, 2012	March 29, 2014
April 12, 2010	March 21, 2011	October 22, 2012	March 31, 2014
April 20, 2010	March 23, 2011	October 23, 2012	April 1, 2014
April 21, 2010	March 24, 2011	November 16, 2012	April 4, 2014
April 27, 2010	March 25, 2011	November 17, 2012	April 25, 2014
April 28, 2010	March 26, 2011	November 18, 2012	September 25, 2014
May 25, 2010	April 8, 2011	November 28, 2012	October 25, 2014
May 27, 2010	May 15, 2011	November 29, 2012	October 31, 2014
October 17, 2010	May 16, 2011	December 2, 2012	November 1, 2014
		December 3, 2012	November 13, 2014

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.





July 15, 2015

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ms. Melody Canady  
Chief Business Officer  
Pajaro Valley Unified School District  
294 Green Valley Road  
Watsonville, CA 95076

**Re: Notice of Violations and Intent to File Suit**  
**Under the Federal Water Pollution Control Act**

Dear Ms. Canady:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the facility owned by Santa Cruz County ("the County") and operated as a school bus maintenance facility by the Pajaro Valley Unified School District ("PVUSD"), located at 198 Grimmer Road, Watsonville, California ("the Facility"). The WDID number for the Facility is 344S002829. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including Corralitos Creek, Salispuedes Creek, the Pajaro River, and Monterey Bay. This letter is being sent to you as the responsible operators of the Facility.

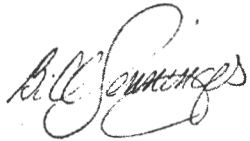
On November 18, 2014, CSPA issued a Notice of Violations and Intent to File Suit ("November 18, 2014 NOV") to the County as the responsible owner of the Facility. The November 18, 2014 NOV is attached hereto as Attachment A and incorporated fully herein by reference. All references to the "County" or "Santa Cruz County" contained in the November 18, 2014 Notice shall apply equally to PVUSD, and PVUSD is put on notice of all violations alleged therein.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act

Notice of Violation and Intent To File Suit  
July 15, 2015  
Page 2

against PVUSD and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Jennings".

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**SERVICE LIST**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Jared Blumenfeld  
Administrator, U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Eric Holder  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Thomas Howard, Executive Director  
State Water Resources Control Board  
1001 I Street Sacramento, CA 95814  
P.O. Box 100  
Sacramento, CA 95812-0100

Kenneth A. Harris, Jr., Executive Officer  
Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906

**EXHIBIT C-1—BMPs  
Ben Lomond Facility**

On or before the dates set forth in Exhibit E, BMP Implementation Schedule, Defendants shall be responsible for implementing the following BMPs at the Ben Lomond Facility:

- A. *Compliance with General Permit.* On or before July 1, 2015, Defendants shall implement all mandatory minimum BMPs set forth in Section X.H of the General Permit at the Ben Lomond Facility.
- B. *Install sediment filters and filter socks.* Defendants shall install sediment filters (witches' hats or filter fabric filters) on each drain inlet at the Ben Lomond Facility. For areas where potential pollutants include heavy metals, metals-removal filter socks such as Filtrexx EnviroSoxx shall be installed around drain inlets according to manufacturer specifications and design criteria. Check dams (such as sandbags, "silt sifter" socks or other means of slowing water flow) shall be installed in drainage conveyances (v-ditches and swales) on slopes at the Ben Lomond Facility. The Stormwater Pollution Prevention Plan ("SWPPP") for the Ben Lomond Facility shall incorporate cleaning of accumulated sediment, inspection and maintenance of these improvements.
- C. *Repair or replace damaged asphalt concrete pavement.* Defendants shall repair or replace broken or damaged asphalt pavement at the Ben Lomond Facility to reduce the trapping of sediment in the pavement cracks and improve the ability to sweep these areas.
- D. *Install AC or concrete curb and drain inlet reconstruction.* Defendants shall install an AC or concrete curb or berm at the fence at the Ben Lomond Facility and install catch basin-type drain inlets or other hardscape features to allow collected storm water to be filtered for sediment prior to discharge. This requirement applies to two drains at the Ben Lomond Facility located adjacent to the Recycle Area where there is a makeshift headwall connected to a pipe that drains down the hillside towards sample TS-1.
- E. *Cover bins.* Defendants shall cover bins that contain industrial materials at the Ben Lomond Facility when not in use, in accordance with the requirements of the General Permit.
- F. *Sweeping.* Defendants shall conduct regenerative sweeping at the Ben Lomond Facility weekly between October 1<sup>st</sup> and May 31<sup>st</sup> and every other week during the remainder of the year. Defendants shall submit the make and model of regenerative sweepers to be used at the Ben Lomond Facility to CSPA for its

1 approval which shall not be unreasonably withheld. Defendants shall also  
2 conduct weekly manual sweeping in areas at the Ben Lomond Facility where  
3 sediment accumulates and are not easily accessed for regenerative sweeping.  
4 Defendants shall cover industrial materials stored outdoors at the Ben Lomond  
5 Facility at all times the materials are not in active use.

6 G. *Reconstruct drain at Sample Point TS-1.* Defendants shall reconstruct the outfall  
7 drain (TS-1) at the Ben Lomond Facility to reduce water velocity in this area and  
8 allow water to pool prior to sampling, and install erosion control measures on  
9 lower hillside to reduce hillside erosion (rip rap or other means). The SWPPP  
10 for the Ben Lomond Facility shall incorporate inspection and maintenance of  
11 these improvements.

12 H. *Restore Sediment Pond.* Defendants shall restore the sediment pond at the Ben  
13 Lomond Facility to its original design capacity. After restoration is complete,  
14 pond discharge samples shall be collected from the pond surface adjacent to  
15 pond overflow discharge.

16 I. *Install BMPs at Wood Waste Processing Area.* Defendants shall install barriers  
17 between processed wood piles and drains at the wood waste processing area at  
18 the Ben Lomond Facility so the area can be kept clean. Processed wood piles  
19 shall be covered before significant storms. Properly trenched and staked straw  
20 wattles shall be installed around construction and demolition (C&D) waste  
21 stockpile(s) in this area. Fiber rolls shall be installed around the drain and the  
22 areas near the drain shall be cleaned and maintained to reduce sediment  
23 accumulation. The SWPPP for the Ben Lomond Facility shall incorporate  
24 maintenance of this area.

25 J. *Increased Training.* Defendants shall increase training for the County's Storm  
26 Water Pollution Prevention Team ("SWPPT") for the Ben Lomond Facility. The  
27 SWPPP for the Ben Lomond Facility shall incorporate the holding of bi-annual  
28 meetings. The SWPPT training shall be conducted near September 15th and  
January 15<sup>th</sup> to provide awareness and training prior to and during the time of  
year during which most storms occur. The training shall include classifying a  
qualifying storm event, visual monitoring during sampling, and monthly non-  
storm water discharge and BMP inspections. The training shall also include  
sampling technique, field equipment operation, quality assurance, and proper  
reporting in SMARTS and in the Facility's Annual Report. The County shall log  
these meetings with the date, materials covered, written agenda, and a list of  
attendees for each, and shall retain these logs with the SWPPP. Within sixty (60)



days of the certification becoming available, the County shall have at least one member of the SWPPT, that meets the certification qualifications, be formally certified as a Qualified Industrial Storm Water Practitioner ("QISP").

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**EXHIBIT C-2 – BMPs**

**Buena Vista Facility**

On or before the dates set forth in Exhibit E, BMP Implementation Schedule, Defendants shall be responsible for implementing the following BMPs at the Buena Vista Facility:

- A. *Compliance with General Permit.* On or before July 1, 2015, Defendants shall implement all mandatory minimum BMPs set forth in Section X.H of the General Permit.
- B. *Install sediment filters and filter socks.* Defendants shall install sediment filters (witches' hats or filter fabric filters) on each drain inlet at the Facility. For areas where potential pollutants include heavy metals, metals-removal filter socks such as Filtrexx EnviroSoxx shall be installed around drain inlets according to manufacturer specifications and design criteria. Check dams (such as sandbags, "silt sifter" socks or other means of slowing water flow) shall be installed in drainage conveyances (v-ditches and swales) on slopes at the Facility. The Stormwater Pollution Prevention Plan ("SWPPP") for the Facility shall incorporate cleaning of accumulated sediment, inspection and maintenance of these improvements.
- C. *Cover bins.* Defendants shall cover bins containing industrial materials at the Facility when not in use, in accordance with the requirements of the General Permit.
- D. *Sweeping.* Defendants shall conduct machine sweeping weekly year round at the Buena Vista facility and more frequently as needed from October 1<sup>st</sup> through May 31<sup>st</sup>. Defendants shall submit the make and model of machine sweepers to be used at the Facility to CSPA for its approval which shall not be unreasonably withheld. Defendants shall conduct manual sweeping weekly in areas at the Facility where sediment accumulates and are not easily accessed for machine sweeping. Defendants shall cover industrial materials stored outdoors at the Facility at all times the materials are not in active use, except for the wood processing area, the scrap metal area and the waste concrete piles, except as otherwise expressly required herein.
- E. *Construct perimeter ditch to route additional storm water to Water Quality Unit.* Defendants shall construct a perimeter ditch starting at the southern boundary of Module 4A (Drainage Area D1), adjacent to Harkins Slough Road and circling around Modules 4B (active) and Module 5 (future), terminating into the Water Quality Unit. This perimeter ditch will be located

1 inboard of the perimeter fence to intercept surface sheet flow off the landfill  
2 cap and route that water to the Water Quality Unit. This ditch is installed in  
3 lieu of sampling the perimeter ditch that is located just outside the landfill  
4 fence, which receives substantial flow from off-site areas. This new  
5 perimeter ditch would also intercept flow, if any, from the active landfill  
6 areas.

7 F. *Closure of curb cuts across from Recycle Area and Scale.* Defendants shall  
8 reconstruct asphalt curbs across from the Recycle and Scale Area to prevent  
9 discharge of storm water from those locations. Drop inlets will be installed in  
10 these locations and discharge from these drip inlets will be conveyed to the  
11 slough through new buried piping. These inlets will be fitted with  
12 appropriate inlet-protection BMPs, as specified in Paragraph B above.

13 G. *Segregate wood processing operations and wood piles from the perimeter*  
14 *storm water ditch.* Defendants shall install properly trenched and staked  
15 straw wattles to better filter surface sheet flow water before it reaches the  
16 adjacent ditch. Processed wood piles shall be covered before significant  
17 storms.

18 H. *Install filters at scrap metal pile drainage area.* In lieu of coverage for the  
19 scrap metal pile, Defendants shall design and install metals-removal filter  
20 socks such as Filtrexx EnviroSoxx to remove TSS and heavy metals from the  
21 scrap pile area. By October 31, 2015, Defendants shall provide CSPA with a  
22 proposal for a BMP or BMPs capable of removing heavy metals such as iron,  
23 aluminum, and zinc from the scrap metal pile runoff.

24 I. *Increased Training.* Defendants shall increase training for the County's  
25 Storm Water Pollution Prevention Team ("SWPPT") for the Buena Vista  
26 Facility. The SWPPP for the Buena Vista Facility shall incorporate the  
27 holding of bi-annual meetings. The SWPPT training shall be conducted near  
28 September 15th and January 15<sup>th</sup> to provide awareness and training prior to  
and during the time of year during which most storms occur. The training  
shall include classifying a qualifying storm event, visual monitoring during  
sampling, and monthly non-storm water discharge and BMP inspections. The  
training shall also include sampling technique, field equipment operation,  
quality assurance, and proper reporting in SMARTS and in the Facility's  
Annual Report. The County shall log these meetings with the date, materials  
covered, written agenda, and a list of attendees for each, and shall retain these  
logs with the SWPPP. Within sixty (60) days of the certification becoming

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available, the County shall have at least one member of the SWPPT, that meets the certification qualifications, be formally certified as a Qualified Industrial Storm Water Practitioner ("QISP").



**EXHIBIT C-3—BMPs**  
**Roy Wilson Facility**

On or before the dates set forth in Exhibit E, BMP Implementation Schedule, PVUSD shall be responsible for implementing the following BMPs at the Roy Wilson Facility, provided that the County is responsible to implement mandatory minimum BMPs set forth in Section X.H of the Revised General Permit until the date set forth in subparagraph (A) below:

- A. *Compliance with Revised General Permit.* Commencing upon the effective date of a new lease between the County and PVUSD for PVUSD's continued use of the Roy Wilson Facility, PVUSD shall implement all mandatory minimum BMPs set forth in Section X.H of the Revised General Permit.
- B. *Install sediment filters.* PVUSD shall install sediment filters (witches' hats or filter fabric filters) on each drain inlet at the Facility. Media filled socks designed to address TSS, metals and hydrocarbons, such as Filtrexx EnviroSoxx, shall be installed around drain inlets according to manufacturer specifications and design criteria. The Stormwater Pollution Prevention Plan ("SWPPP") for the Facility shall incorporate cleaning of accumulated sediment, inspection and maintenance of these drain inlet BMPs.
- C. *Pavement Repair and Replacement.* PVUSD shall replace or repair those areas of broken or severely cracked pavement where earth is visible between the cracks to reduce sediment accumulation and facilitate sweeping and good housekeeping within the District's portion of the leased Premises, especially between buildings 2 and 3.
- D. *Spill and drip housekeeping.* PVUSD shall inspect and clean the bus parking areas daily to remove oil spills and drips. Absorbent material like "kitty litter" shall be deployed to collect oil from buses in the older fleet to prevent leaks to the pavement and PVUSD shall endeavor to sweep the oil absorbent material daily.
- E. *Conduct machine sweeping.* PVUSD shall conduct bi-monthly machine sweeping, either through brush-type or vacuum-type sweepers ("machine sweeping") between October 1<sup>st</sup> and May 31<sup>st</sup> and monthly machine sweeping



1 for the remainder of the year. PVUSD shall submit the make and model of  
2 machine sweepers to be used at the Facility to CSPA for its approval which  
3 shall not be unreasonably withheld. The District shall conduct manual  
4 sweeping in areas at the Facility where sediments accumulate and are not  
5 easily accessed for machine sweeping. Industrial materials stored outdoors at  
6 the Facility should be covered when not in active use.

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8 F. *Steam Rack and Vehicle Wash.* PVUSD shall capture all wash water from the  
9 steam rack in tanks and dispose of this water off the property. PVUSD shall  
10 build a concrete berm completely around the steam rack washing area such  
11 that surface sheet flow cannot enter the wash area from any direction.  
12 PVUSD shall document the function of the clarifier and septic system at the  
13 Bus Wash Area and verify it has adequate capacity to receive and treat wash  
14 water. If PVUSD cannot confirm the functionality of the system, the parties  
15 shall meet and confer regarding an alternative BMP or upgrade to the current  
16 system.

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18 G. *Increased Training.* PVUSD shall use reasonable efforts to increase training  
19 for PVUSD's Storm Water Pollution Prevention Team ("SWPPT") for the  
20 Roy Wilson Facility. The SWPPP for the Roy Wilson Facility shall  
21 incorporate the holding of bi-annual meetings. The SWPPT training shall be  
22 conducted near September 15th and January 15<sup>th</sup> to provide awareness and  
23 training prior to and during the time of year during which most storms occur.  
24 The training shall include classifying a qualifying storm event, visual  
25 monitoring during sampling, and monthly non-storm water discharge and  
26 BMP inspections. The training shall also include sampling technique, field  
27 equipment operation, quality assurance, and proper reporting in SMARTS  
28 and in the Facility's Annual Report. PVUSD shall log these meetings with  
the date, materials covered, written agenda, and a list of attendees for each,  
and shall retain these logs with the SWPPP. Within ninety (90) days of the  
certification becoming available, PVUSD shall have at least one member of  
the SWPPT, that meets the certification qualifications, be formally certified  
as a Qualified Industrial Storm Water Practitioner.

**EXHIBIT D**

**Ben Lomond Facility:**

Parameter	Level of Potential Concern Value
pH	6.0 – 9.0
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Chloride	860 mg/L
Chemical Oxygen Demand	120 mg/L
Aluminum	0.75 mg/L
Iron	1.0 mg/L
Lead	0.262 mg/L
Zinc	0.26 mg/L

**Buena Vista Facility:**

Parameter	Level of Potential Concern Value
pH	6.0 – 9.0
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Chemical Oxygen Demand	120 mg/L
Chloride	860 mg/L
Aluminum	0.75 mg/L

Iron	1.0 mg/L
Lead	0.262 mg/L
Zinc	0.26 mg/L

**Roy Wilson Facility:**

Parameter	Level of Potential Concern Value
pH	6.0 – 9.0
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Aluminum	0.75 mg/L
Copper	0.0332 mg/L
Iron	1.0 mg/L
Lead	0.262 mg/L
Zinc	0.26 mg/L

EXHIBIT E—BMP IMPLEMENTATION SCHEDULE

Ben Lomond Facility:

Exhibit C Item	Best Management Practice	Implementation Date
A.	Comply with General Permit	July 1, 2015
B.	Install sediment filters and filter socks	October 1, 2015
C.	Repair or replace damaged asphalt concrete pavement	November 30, 2015
D.	Install AC or concrete curb and drain inlet reconstruction	October 31, 2015
E.	Cover bins	July 1, 2015
F.	Sweeping	July 1, 2015
G.	Reconstruct drain at Sample Point TS-1	October 31, 2015
H.	Restore sediment pond	October 1, 2015
I.	Install BMPs at wood waste processing area	October 1, 2015
J.	Increased training	September 30, 2015

**Buena Vista Facility:**

<b>Exhibit C Item</b>	<b>Best Management Practice</b>	<b>Implementation Date</b>
A.	Comply with General Permit	July 1, 2015
B.	Install sediment filters and filter socks	October 1, 2015
C.	Cover bins	July 1, 2015
D.	Sweeping	July 1, 2015
E.	Construct perimeter ditch to route additional storm water to Water Quality Unit	October 1, 2015
F.	Closure of curb cuts across from Recycle Area and Scale.	October 1, 2015
G.	Segregate wood processing operations and wood piles from the perimeter storm water ditch	October 1, 2015
H.	Install filters at scrap metal pile drainage area	October 31, 2015
I.	Increased training	September 30, 2015



Roy Wilson Facility:

Exhibit C Item	Best Management Practice	Implementation Date
A.	Comply with General Permit	November 10, 2015
B.	Install Sediment Filters	December 15, 2015
C.	Pavement Repair and Replacement	February 29, 2016
D.	Spill and drip housekeeping	December 15, 2015
E.	Conduct machine sweeping	September 1, 2015
F.	Steam Rack and Vehicle Wash	March 31, 2016
G.	Increased training	January 15, 2016